

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE A. MARUCCI and DEPARTMENT OF THE ARMY,
HEADQUARTERS CECOM, Fort Monmouth, N.J.

*Docket No. 97-2032; Submitted on the Record;
Issued April 9, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has established that she developed an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

On December 1, 1995 appellant, then a 35-year-old provisioning specialist, filed a Form CA-2 claim for an emotional condition which she alleged resulted from slanderous remarks and sexual innuendoes made in her work environment. This claim was assigned No. 02-0709238.

By letter dated March 7, 1996, the Office of Workers' Compensation Programs requested further information including appellant's medical history, a listing of nonwork stressors, statements from knowledgeable coworkers, statements from other persons with knowledge of the alleged harassment and a supervisory statement. The Office also requested comments from the employing establishment.

On April 4, 1996 appellant filed another Form CA-2 claim for an emotional condition causally related to harassment at work. Appellant alleged two elevator harassment incidents. This claim was assigned No. 02-0711905.

Also on April 4, 1996 appellant filed a third CA-2 claim for an emotional condition causally related to harassment at work. Appellant alleged that a nurse was demeaning, intrusive and irrational towards her. This claim was assigned No. 02-0712053.

In support of each of these claims, appellant submitted the same nine-page statement mentioning rumors spread about her, overt harassment, elevator harassment and nurse harassment. Appellant claimed that a coworker, Ruby McGlaughlin, made sexually harassing remarks to her, clapped her hands at her, laughed at her, grunted at her, and stared at her. Appellant also alleged that some of Ms. McGlaughlin's coworkers, Joe Misek, Frank Muniz and Jim Ball spreaded rumors about her. Appellant additionally alleged that a health unit nurse,

Abby Murray, spoke to her in a demeaning, intrusive and irrational way. Appellant further detailed at length her symptoms and medical treatment.

Appellant also submitted copies of paperwork submitted for her Equal Employment Opportunity (EEO) complaint.

Appellant additionally submitted copies of medical treatment reports for each claim.

By letter dated April 11, 1996, regarding claim No. 02-0711905, the Office requested further information including appellant's medical history, her nonwork stressors, statements from coworkers involved in the harassing, statements from other persons with knowledge of the harassment and a supervisory statement.

On August 20, 1996 appellant's supervisor responded that he had not been privy to appellant's CA-2 claim and therefore could not comment on whether the employing establishment agreed with appellant's claim.

Nothing further was received from appellant.

By decision dated August 20, 1996, the Office rejected appellant's claim No. 02-0709238 finding that she failed to establish that an injury was sustained as alleged. The Office found that appellant failed to submit statements corroborating her version of the events alleged, and it advised that unfounded perceptions of harassment do not constitute a compensable employment factor.

By letter dated August 27, 1996, appellant, through her representative, requested an oral hearing on the August 20, 1996 denial. The hearing was scheduled for February 25, 1997.

By decision dated October 1, 1996, the Office rejected appellant's claim No. 02-0711905 finding that she had failed to establish that an injury was sustained as alleged. The Office found that appellant had failed to submit any factual evidence of harassment, and it advised that unfounded perceptions of harassment do not constitute a compensable employment factor.

By decision dated October 4, 1996, the Office rejected appellant's claim No. 02-0712053 finding that she failed to establish that an injury occurred in the performance of duty. The Office found that appellant presented no evidence of rudeness, profanity or abuse by the nurse. The Office found that appellant's perceptions of harassment were self-generated.

By letter dated October 25, 1996, appellant, through her representative, requested an oral hearing regarding claim No. 02-0711905. Also by separate letter that date appellant requested a hearing in claim No. 02-0712053.

By decision dated February 1, 1997, the Branch of Hearings and Review determined that appellant's request for a hearing in case No. 02-0712053 could not be granted as the case was not in posture for a hearing. The hearing representative found that in deciding the nurse harassment claim No. 02-0712053, the Office failed to make findings of fact regarding the other

allegations of elevator harassment and general sexual harassment,¹ that were mentioned in the same nine-page statement appellant submitted for all three claims.

On February 25, 1997 a hearing was held on claim No. 02-0709238. At the hearing appellant submitted a copy of the original nine-page statement, multiple physicians' reports, additional personal comments pertaining to her claim and an employing establishment fact finding conference transcript of appellant's testimony.

By decision dated April 7, 1997, the Office vacated the prior order in claim No. 02-0712053 and again rejected appellant's claim finding that the evidence of record failed to establish that appellant sustained an injury in the performance of duty. The Office found that the evidence of record did not support the use of profanity, rudeness or unprofessionalism by the nurse, did not support that coworkers made slanderous remarks, started rumors, or engaged in sexual innuendo directed against appellant, and did not support the allegations of elevator harassment. The Office found that, since the record lacked any evidence to establish any of the alleged incidents as being factual, appellant failed to establish her claim.

By decision dated April 28, 1997, the hearing representative affirmed the August 20, 1996 decision in claim No. 02-0709238 finding that appellant had failed to submit any factual corroborating evidence supporting that the events alleged actually occurred. The hearing representative also noted that the claims No. 02-0711905 and No. 02-0712053 contained the same allegations as claim No. 02-0709238 and therefore should be combined with the instant claim in master file No. 02-0671238.

The Board finds that appellant has failed to establish that she developed an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

To establish appellant's claims that she has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized 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.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. Such an opinion of the physician 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

¹ Claims No. 02-0711905 and No. 02-0709238, decided October 1, 1996 and August 20, 1996 respectively.

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

³ See *Martha L. Watson*, 46 ECAB 407 (1995); *Donna Faye Cardwell*, *supra* note 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 situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations 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 to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not compensable where it results from such factors as an employee's fear of a reduction-in-force, her frustration from not being permitted to work in a particular environment or to hold a particular position, or her failure to secure a promotion. 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.⁴ 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.⁵ In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to her 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.⁶

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered.⁷ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁸ When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.⁹

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Artice Dotson*, 41 ECAB 754 (1990); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984).

⁶ *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

⁷ *See Barbara Bush*, 38 ECAB 710 (1987).

⁸ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁹ *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

Appellant alleged that she was harassed by rumors started about her, by slander from coworkers, by sexual innuendoes from coworkers, by coworker behavior towards her consisting of hand clapping, staring, laughing, and grunting, and by a nurse being unprofessional towards her. With regard to appellant's allegations of harassment, it is well established that for harassment to give rise to a compensable disability under the Act there must be some evidence that the implicated incidents of harassment did, in fact, occur. Mere perceptions of harassment or discrimination alone are not compensable.¹⁰ An employee's charges that he or she was harassed or discriminated against are not determinative of whether or not harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹¹

Appellant has not alleged that she developed an emotional condition arising out of her regular or specially assigned duties, or out of specific requirements imposed by her employment. Appellant alleged that her emotional condition was the result of coworker harassment. The Board finds, however, that appellant has failed to submit any specific, reliable, probative and substantial evidence in support of her allegations, establishing that any of these incidents occurred as alleged. Appellant has the burden of establishing a factual basis for her allegations, but she has not met this burden as the allegations in question are not supported by the required specific, reliable, probative and substantial factual evidence. Consequently, the Board finds that these allegations cannot be considered to be compensable factors of employment since appellant has not established a factual basis for them, such that she is not now entitled to benefits under the Act

¹⁰ *Helen Casillas*, 46 ECAB 1044 (1995); *Ruth C. Borden*, 43 ECAB 146 (1991).

¹¹ *See Anthony A. Zarcone*, 44 ECAB 751 (1993).

Accordingly, the decisions of the Office of Workers' Compensation Programs dated April 28 and 7, 1997, October 4 and 1, 1996 and August 20, 1996 are hereby affirmed.¹²

Dated, Washington, D.C.
April 9, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member

¹² The decision of the Office of Workers' Compensation Programs hearing representative dated February 1, 1997 is not being affirmed.