

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE SHELLY and DEPARTMENT OF THE NAVY,
NAVAL SUPPORT ACTIVITY, New Orleans, La.

*Docket No. 97-1648; Submitted on the Record;
Issued May 7, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues is whether appellant has established that she sustained an emotional or physical condition causally related to compensable factors of her federal employment.

In the present case, appellant filed a claim on August 16, 1996 alleging that she sustained emotional stress, along with chest pains, insomnia, fatigue and headaches, as a result of harassment by her supervisors. A review of the record indicates that appellant has identified the following incidents as relevant to her claim: (1) she filed a complaint with the Equal Employment Opportunity Commission (EEOC) alleging discrimination based on race with respect to the employing establishment's failure to select her for the position of supply technician; (2) appellant also filed an EEOC complaint on May 22, 1996 alleging that she was charged 8 hours of absent without leave (AWOL) on April 26, 1996 in reprisal for the previous EEOC complaint; (3) the employing establishment issued her a letter of caution dated May 13, 1996, with respect to appellant's contacting of a senior employee and asking questions regarding her nonselection to a position in the supply department; (4) the employing establishment issued a letter of caution dated July 31, 1996, alleging that she failed to communicate information to her supervisor on July 12, 1996 as requested, and that she exhibited hostile behavior to her supervisor on July 29, 1996; and (5) the employing establishment issued a notice of proposed suspension dated September 6, 1996, which was reduced to a letter of reprimand by letter dated September 27, 1996.

In a decision dated February 19, 1997, the Office of Workers' Compensation Programs denied her claim, finding that appellant had not established a compensable factor of employment.

The Board finds that appellant has not established an injury causally related to compensable factors of her federal employment.

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.¹ To establish her claim 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.²

Workers' compensation law does not apply 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. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³

In the present case, appellant has not attributed a medical condition to the performance of her regular or specially assigned duties, but rather to actions of the employing establishment which she has characterized as harassment or retaliation for filing an EEOC complaint. With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers, which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁴ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁵

Appellant has not submitted probative and reliable evidence of harassment in this case. To the extent that appellant is alleging that her failure to be selected for a supply position was racial discrimination and contributed to an emotional or physical condition, there is no evidence to support a claim based on racial discrimination. The only evidence of record is that appellant filed a claim with the EEOC; there are no findings made and no other evidence was submitted. Similarly, the record indicates that appellant filed a complaint of reprisal with respect to being charged eight hours of AWOL on April 26, 1996, but no other relevant evidence is found in the record.

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

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

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

⁴ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁵ *Helen P. Allen*, 47 ECAB 141 (1995).

The Board notes that matters involving leave, as well as the disciplinary matters that occurred in this case, such as letters of caution and reprimand, are administrative or personnel matters that are generally not covered under the Act as they are functions of the employer rather than duties of the employee.⁶ Coverage under the Act may only be afforded for administrative functions of the employer if the claimant establishes that the employer erred or acted abusively in carrying out its administrative function.⁷

The record indicates that the May 13, 1996 letter, of caution was rescinded by settlement agreement dated July 11, 1996. This does not in itself, however, establish that the letter of caution was erroneous. An agreement that lessens or removes a disciplinary action does not in itself establish error or abuse by the employing establishment.⁸ In this case, the settlement agreement specifically stated that it did not constitute an admission of discrimination or reprisal and there is no other evidence establishing error or abuse. Similarly, the reduction of the notice of proposed suspension to a letter of reprimand does not establish error or abuse absent other probative evidence.⁹

With respect to the July 31, 1996 letter, of caution, appellant has alleged that she was subject to abusive and hostile behavior by her supervisors when she was given the letter on July 31, 1996. The statements from the supervisors do not support appellant's allegations and in fact are consistent in asserting that it was appellant who engaged in hostile behavior.

Based on the evidence of record, the Board is unable to find that the employing establishment erred or acted abusively in the performance of administrative functions in this case. In addition, the record does not establish harassment or reprisal by the employing establishment. The Board, therefore, finds that appellant has not established a compensable factor of employment as contributing to an injury in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.¹⁰

⁶ See *Barbara E. Hamm*, 45 ECAB 843 (1994).

⁷ *Diane C. Bernard*, 45 ECAB 223 (1993).

⁸ *Garry M. Carlo*, 47 ECAB 299 (1996); *Barbara E. Hamm*, *supra* note 6.

⁹ *Richard J. Dube*, 42 ECAB 916 (1991) (letter of warning reduced to official discussion).

¹⁰ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

The decision of the Office of Workers' Compensation Programs dated February 19, 1997 is affirmed.

Dated, Washington, D.C.
May 7, 1999

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member