

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY A. NAULTY and SOCIAL SECURITY ADMINISTRATION,
OFFICE OF HEARINGS & APPEALS, Voorhees, NJ

*Docket No. 98-876; Submitted on the Record;
Issued November 17, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

The Board has duly reviewed the case on appeal and finds that appellant has failed to meet her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

Appellant filed a claim on July 7, 1997 alleging that on June 27, 1997 she developed stress in the performance of duty. The Office of Workers' Compensation Programs denied appellant's claim by decision dated October 23, 1997. Appellant requested reconsideration and the Office reviewed appellant's claim on the merits on February 19, 1998.

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 concept 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 is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.¹

In this case, appellant attributed her stress-related condition to a request that she stop wearing her perfume. Appellant's supervisor, Linda M. Comito, stated that on June 27, 1997 appellant was asked not to wear her perfume as it interfered with an asthmatic coworker's breathing. Appellant stated that she would continue to wear this perfume and was then asked to remain on her side of the office to minimize exposure to the coworker. Appellant alleged that

¹ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

she received the request to abstain from wearing her perfume through her union representative, a close friend, rather than through her supervisor.

Appellant has alleged that the employing establishment committed error or abuse in a personnel matter, requesting that the union representative ask appellant to refrain from using her perfume, rather than presenting a direct request from her supervisor. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.²

Appellant has submitted no evidence that it was unreasonable for the employing establishment to request that the union representative, appellant's friend, address the personal issue of appellant's perfume and its impact on her coworker. As there is no evidence of error or abuse on the part of the employing establishment, appellant has failed to establish this factor of employment.

Appellant submitted an additional statement alleging that the coworker, Teresa Madsen, had harassed her by holding her nose and making remarks regarding her perfume. She stated that other employees wore the same perfume and were not subject to the same request, that her duties required that she frequent all parts of the office, and that she was not asked to shower to remove the perfume. Appellant further alleged that Ms. Madsen had on a previous occasion thrown away her lunch on the pretext that it was no longer edible.

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such 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.³

In this case, appellant has submitted no evidence supporting her allegations that she was harassed either by her coworker or by the employing establishment. Appellant's unsubstantiated allegations regarding her coworker's actions and the fact that others wore her same perfume are not sufficient to establish that she experienced harassment.

As appellant has failed to substantiate a compensable factor of employment, she has failed to meet her burden of proof in establishing an emotional condition due to factors of her federal employment.

² *Martha L. Watson*, 46 ECAB 407 (1995).

³ *Alice M. Washington*, 46 ECAB 382 (1994).

The February 19, 1998 and October 23, 1997 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
November 17, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member