

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA D. GARY and DEPARTMENT OF HEALTH & HUMAN SERVICES, NATIONAL INSTITUTE OF HEALTH, Bethesda, MD

*Docket No. 98-144; Submitted on the Record;
Issued September 22, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On September 16, 1996 appellant, then a 31-year-old secretary, filed a notice of occupational disease, alleging that she suffered stress, anxiety and headaches as a result of her federal employment. Appellant stated that she became aware of the disease or illness on May 9, 1996 and that it was caused or aggravated by her employment on June 3, 1996. She stopped working on June 3, 1996.

Appellant alleged that her supervisor, Veronica Crawford-Robinson, placed her in a "secretarial rotation" which required her to work in another position. She also stated that on March 8, 1996 her supervisor asked her to download a computer, a task outside her duties as a secretary. Appellant also indicated that her supervisor told her on April 25, 1996 that she should not have attended a training class at another facility without first reporting to her normal worksite. Appellant further stated that on May 20, 1996 her supervisor asked another employee about her whereabouts and commented that she needed appellant to prepare a "goddamn letter." She indicated that when her supervisor realized she was present, the supervisor asked her to prepare the letter by a deadline. Appellant indicated that these incidents created an unbearable work environment.

Appellant also alleged that her supervisor ignored corrections that she made to office documents. She indicated that she was responsible for the corrections and that her supervisor would state that the corrections were made despite the fact that the errors remained in the documents.

Appellant also stated that an intense meeting on June 3 and May 9, 1996 exacerbated her illness.

Appellant further stated that her supervisor sent her numerous letters regarding her absences from work. In this regard, she submitted June 5 and 10, 1996 letters from her supervisor in which the leave she took was documented to the employing establishment's timekeeper. Appellant also submitted a letter from her supervisor requesting medical documentation for sick leave, a letter indicating that she was being removed from an alternate work schedule program while she remained out of work and a letter indicating that she was being charged as absent without leave beginning July 9, 1996 since she had not returned to work and was not on approved leave. She also indicated that on June 6, 1996 her supervisor required her to fax a medical justification for sick leave despite the fact that appellant told her that she did not have a fax machine.

Appellant further stated that, since she has been ill at home, her supervisor harassed her with calls, letters and through other people. In this regard, she stated that her supervisor breached her confidentiality by leaving her medical report on a desk in public view on June 13, 1996. Appellant further stated that her supervisor called her on June 24 and June 27, 1996 to discuss her leave status and return to work. She also indicated that, upon the request of her supervisor, another employee requested that she pick up documents at the worksite while she was at home ill. Appellant reasoned that this was done to test her wellness and fire her if she was not really sick. Finally, she stated that another employee, Dorthea Taylor Kennedy, told her that her supervisor was going to issue an ultimatum requiring her to return to work or be fired.

Appellant's supervisor responded in a letter dated October 22, 1996. She stated that appellant's job rotation was simply a part of an employing establishment program to develop its employees. She denied asking appellant to download a computer on March 8, 1996 and stated that appellant was merely asked to save files onto a disc, a task within her position description. The supervisor stated that she told appellant to report to her worksite prior to her training class because appellant's normal workday started a full hour before the training class. The supervisor denied that she stated to another employee that she needed appellant to prepare a "goddamn letter." She stated that appellant's references to a meeting on May 9, 1996 and June 3, 1996 were too vague. The supervisor denied that she required appellant to fax medical documentation and stated that appellant volunteered to do so. Finally, the supervisor indicated that appellant's accusations about breaching confidentiality, harassing her about leave, and using other employees to harass her were both vague and untrue.

By decision dated July 17, 1997, the Office of Workers' Compensation Programs rejected appellant's claim because the evidence failed to demonstrate that the claimed injury occurred in the performance of duty.

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation

Act.¹ 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.²

In cases involving emotional conditions, the Board has held that when working conditions are alleged as factors in causing a condition or 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.³ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁴

In the present case, appellant alleged that her emotional condition resulted from her transfer into another secretarial position as a result of a secretarial rotation. The reassignment of an employee to a different position constitutes an administrative or personnel matter and is not a compensable factor of employment absent evidence of error or abuse.⁵ Inasmuch as appellant failed to allege any error or abuse in her change of assignments and her supervisor indicated that the change was simply an implementation of a plan to develop the employing establishment's employees, this fails to constitute a compensable factor of employment.

Similarly, appellant's assignment by her supervisor to download a computer constitutes an administrative or personnel matter.⁶ Because this task involved secretarial skill, it was not unreasonable for appellant to be assigned the task. Accordingly, this fails to constitute a compensable factor of employment as there is no evidence of error or abuse.

Appellant also alleged that she suffered an emotional condition because her supervisor told her she should have reported to work prior to attending a training class. Her supervisor, however, explained that she told appellant this because the training class began a full hour after appellant's regular workday. An oral reprimand constitutes an administrative or personnel matter.⁷ Because appellant's supervisor provided a reasonable explanation for the reprimand,

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁴ *Id.*

⁵ *James W. Griffin*, 45 ECAB 774 (1994).

⁶ *Id.*

⁷ *Janet I. Jones*, 47 ECAB 345 (1996).

appellant failed to provide sufficient evidence of error or abuse to make this incident constitute a compensable factor of employment.

Appellant also alleged that her supervisor inquired about her whereabouts and told another employee that she needed appellant to prepare a “goddamn letter.” She asserted that when her supervisor realized she was present she was required to prepare a letter by a deadline. This assignment of tasks is also considered an administrative matter and is not compensable absent evidence of error or abuse.⁸ Although appellant insinuates that her supervisor acted abusively by cursing, appellant failed to submit any corroborating evidence establishing that any abuse occurred. Accordingly, this alleged incident of abuse is not established as factual.⁹

Appellant also stated that her supervisor ignored the corrections she made to documents despite the fact that appellant was responsible for the mistakes. She stated that her supervisor indicated that the corrections were made. The review of appellant’s work by her supervisor is clearly an administrative matter.¹⁰ Inasmuch as appellant failed to allege error or abuse by the supervisor, this cannot constitute a compensable factor of employment.

Appellant also alleged that she exacerbated her illness in intense meetings conducted on June 3 and May 6, 1996. She, however, did not provide any specific details of these meetings sufficient to determine if they constituted compensable factors of employment.¹¹

Appellant also stated that her supervisor sent her numerous letters regarding her absences from work. These letters included letters to the employing establishment’s timekeeper dated June 5 and 10, 1996, which documented the leave appellant took; letters requesting medical documentation for appellant’s sick leave dated June 6 and June 25, 1996; a letter removing appellant from an alternate work schedule due to the leave being taken dated June 25, 1996; and a letter indicating appellant would be considered absent without out leave if she did not return to work or submit additional leave requests dated July 9, 1996. All of these letters concerned the use of leave and constitute an administrative function of the employer.¹² Inasmuch as the record fails to establish any error or abuse concerning these letters, appellant failed to allege compensable factors of employment.

Appellant further contended that her supervisor required her to fax medical justification for her sick leave despite the fact that she did not have a fax machine. Her supervisor denied this allegation and indicated that appellant volunteered to fax the documentation. Because appellant failed to provide any corroborating evidence of this incident it is not established as factual.¹³

⁸ *James W. Griffin, supra* note 5.

⁹ *Id.*

¹⁰ *Helen Casillas*, 46 ECAB 1044 (1995).

¹¹ *Alice M. Washington*, 46 ECAB 382 (1994).

¹² *Joe L. Wilkerson*, 47 ECAB 604 (1996).

¹³ *Janet I. Jones, supra* note 7.

Appellant further alleged that her supervisor breached her confidentiality by leaving a medical report about her on a desk in public view. She, however, failed to present any evidence corroborating this assertion. Accordingly, this incident is not established as factual.¹⁴

Appellant also stated that her supervisor called her on June 24 and 27, 1996 to discuss her leave status and return to work. The supervisor's request about leave and appellant's return to work are administrative in nature.¹⁵ Inasmuch as appellant failed to allege any specific error or abuse the supervisor committed in making these phone calls, they do not constitute compensable factors of employment.

Appellant also indicated that her supervisor used another employee to trick her into coming into the workplace to pick up documents while she was sick. She explained that if she had picked up the documents she would have been fired for feigning her illness. Because appellant failed to submit any evidence supporting this scenario, it is not established as factual.¹⁶ Moreover, appellant's fear of losing her job is not sufficient to constitute a personal injury in the performance of duty.¹⁷

Finally, appellant stated that she was told that her supervisor was going to issue an ultimatum requiring her to return to work or be fired. As established above, fear of losing a job is not sufficient to constitute a personal injury in the performance of duty.¹⁸ Appellant, therefore, failed to establish any compensable factors of employment sufficient to establish that she sustained an emotional condition in the performance of duty.

¹⁴ *Id.*

¹⁵ *Joe L. Wilkerson, supra* note 12.

¹⁶ *Janet I. Jones, supra* note 7.

¹⁷ *Mary L. Brooks*, 46 ECAB 266 (1994).

¹⁸ *Id.*

The decision of the Office of Workers' Compensation Programs dated July 17, 1997 is affirmed.

Dated, Washington, D.C.
September 22, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member