

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDITH A. TOBIAS and DEPARTMENT OF THE NAVY,
NAVAL CONSTRUCTION BATTALION CENTER, Gulfport, MS

*Docket No. 98-1724; Submitted on the Record;
Issued April 14, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained an emotional condition in the performance of duty.

On December 28, 1996 appellant, through her father, filed a claim for severe traumatic depression which she attributed to supervisory harassment and to threats of job termination. By letter dated February 3, 1997, the Office of Workers' Compensation Programs advised appellant that she must identify specific incidents of harassment and threats by her supervisor, and describe these in detail, including dates and persons involved. Appellant provided such a description in an undated 12-page letter, accompanied by a 2-page list of incidents involving her supervisor. She also provided medical reports from Dr. James E. Ruff, a Board-certified psychiatrist, including a February 26, 1997 report in which Dr. Ruff attributed her major depression to harassment by her supervisor.

By decision dated September 17, 1997, the Office found that appellant had not submitted supportive evidence that the alleged incidents actually occurred, and that she therefore had not established that she sustained an injury as alleged.

The Board finds that appellant has not established 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 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. 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 frustration from not being permitted to

work in a particular environment or to hold a particular position.¹ Appellant's fear that her employment might be terminated is not covered under the Act.²

The Board has held that actions of an employee's supervisor which the employee characterizes as harassment or discrimination may constitute factors of employment giving rise to coverage under the Act. However, 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 alone of harassment or discrimination are not compensable under the Act.³ Appellant, in her 12- and 2-page statements, cited specific incidents of harassment by her supervisor. She did not submit evidence; however, to substantiate that these specific incidents occurred as alleged. The statements she submitted from her coworkers addressed general employment conditions and did not show actual knowledge of the specific incidents cited by appellant.

Appellant also submitted a March 21, 1996 decision by the employing establishment's director of the morale, welfare and recreation department on a grievance filed by appellant. This decision found that appellant's supervisor did not threaten to terminate appellant's employment on February 5, 1996, and, with regard to appellant's contention of an "outburst of anger" toward appellant by her supervisor on February 5, 1996, found that the supervisor spoke to appellant "in a loud and harsh voice." While verbal abuse by a supervisor can be a compensable factor of employment,⁴ being spoken to in a loud and harsh voice does not constitute verbal abuse or harassment. As appellant has not substantiated any compensable employment factors, the Office properly denied her claim.

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

² *Donald W. Bottles*, 40 ECAB 349 (1988).

³ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *See Laurence C. Mar*, 42 ECAB 723 (1991).

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

Dated, Washington, D.C.
April 14, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member