

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHEILA R. REVELL and DEPARTMENT OF THE ARMY,
DIRECTORATE OF RESOURCE MANAGEMENT, Fort McCoy, WI

*Docket No. 99-83; Submitted on the Record;
Issued April 18, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

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

On July 12, 1996 appellant, then a 33-year-old budget analyst, filed a notice of occupational disease, claiming that her severe depression was due to constant harassment and discrimination at the employing establishment. Appellant referred to specific incidents such as not being given a performance appraisal for two years, not being allowed to attend training, not being able to discuss job related matters with her supervisor, being exposed to racial comments, her promotions were delayed, she was called names and she was singled out in staff meetings.

In support of her claim, appellant submitted a July 15, 1996 report from Dr. Larry S. Goodlund, an attending Board-certified psychiatrist, who diagnosed major depression and attributed it to racially motivated negative comments at the employing establishment. He opined that appellant was not able to return to the employing establishment and was advised to leave the position as it was "detrimental to her health." Appellant also submitted a disability slip dated July 15, 1996 noting that appellant was unable to return to work due to medical reasons.

Neal R. MacCallum, the Director of Resource Management, denied that appellant was harassed or endured negative behavior by her supervisor and stated that appellant had always been treated with dignity and respect in a note dated July 18, 1996.

By letter dated August 9, 1996, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish her claim. The Office further advised appellant to submit specific factual and medical evidence supportive of her claim.

In an August 29, 1996 response letter, appellant noted that her condition was due to derogatory remarks made by her supervisor, Norman Stump, Jr., that she was not given training,

harassed by co-workers, not getting her performance appraisal done timely, and the stress she endured from racial discrimination suffered by her and her family from the community. Appellant also submitted a statement she prepared alleging various instances of discrimination and harassment, memorandum requesting administrative leave, the denial of her request for administrative leave, a copy of the Office of Complaints and Investigations report regarding her equal employment opportunity complaint, disability slips by Dr. Goodlund, a diagnosis of major depression by Connalee Hoelzen, MSW, treatment notes regarding her pneumonia and information reports regarding difficulties encountered by her children.

By decision dated October 30, 1996, the Office found the evidence of record insufficient to establish that the claimed injury occurred in the performance of duty. In an accompanying memorandum, the Office found that appellant's allegations regarding her performance appraisal and not being sent to training were administrative actions, which were not compensable under the Federal Employees' Compensation Act. The Office also found that the evidence was insufficient to establish error or abuse in handling these matters. In addition, the Office found the evidence insufficient to establish that appellant suffered harassment or discrimination.

In a letter dated November 13, 1996 appellant requested an oral hearing and a hearing was held on October 20, 1997.

By decision dated March 17, 1998, the Office hearing representative affirmed the October 30, 1996 decision on the basis that evidence of record failed to establish a compensable factor of employment.

In a letter dated May 12, 1998 appellant requested reconsideration and submitted e-mail messages she had sent regarding the delay in her performance appraisal, her individual development plan, a cassette of testimony provided at the unemployment hearing by the State of Wisconsin, a November 26, 1996 unemployment decision by the State of Wisconsin administrative law judge, a February 18, 1997 decision by the Appeal Tribunal of the State of Wisconsin, and a September 6, 1996 letter from the employing establishment.

In a merit decision dated August 23, 1998, the Office denied appellant's request for modification on the basis that appellant had failed to identify any compensable employment factor.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

Under the Act,¹ 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. To establish 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

¹ 5 U.S.C. §§ 8101-8193.

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 cover each and every injury or illness that is somehow related to employment.³ There are distinctions regarding the type of work situation giving rise to an emotional condition which will be covered under the Act.

For example, disability resulting from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employing establishment is covered.⁴ However, an employee's emotional reaction to an administrative or personnel matter is generally not covered⁵ and disabling conditions caused by an employee's fear of termination or frustration from lack of promotion are not compensable. In such cases, the employee's feelings are self-generated in that they are not related to assigned duties.⁶

Nonetheless, if the evidence demonstrates that the employing establishment erred or acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁷ However, a claimant must support her allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.⁸ The initial question is whether appellant has alleged compensable employment factors as contributing to her condition.⁹ Thus, part of appellant's burden of proof includes the submission of a detailed description of the specific employment factors or incidents which appellant believes caused or adversely affected the condition for which she claims compensation.¹⁰ If appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.¹¹

Many of appellant's allegations of employment factors that caused or contributed to his condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*,¹²

² *Vaile F. Walders*, 46 ECAB 822, 825 (1995).

³ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁴ *Jose L. Gonzalez-Garced*, 46 ECAB 559, 563 (1995).

⁵ *Sharon J. McIntosh*, 47 ECAB 754 (1996).

⁶ *Barbara E. Hamm*, 45 ECAB 843, 850 (1994).

⁷ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

⁸ *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

⁹ *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

¹⁰ *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

¹¹ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

¹² 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.¹³ Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. The incidents and allegations made by appellant which fall into this category of administrative or personnel actions include: delay in a 1992 performance appraisal, not being allowed to attend training, and was not allowed to discuss job related matters with her supervisor. Regarding appellant not being able to discuss work related matters with her supervisor, appellant has failed to submit any corroborating evidence to support this allegation. Thus, appellant has presented no evidence of administrative error or abuse in the performance of these actions and therefore they are not compensable under the Act.

Appellant further contends that she experienced harassment and racial discrimination from her Career Program Manager, Mr. MacCallum, her supervisor, Mr. Stump, Jr., and from her coworkers. Appellant related that she was called names and exposed to racial comments. Regarding the allegations of harassment, for harassment to give rise to a compensable factor of employment, there must be evidence that harassment did, in fact, occur. Mere perceptions are not compensable.¹⁴ In support of her claim for harassment, appellant submitted a copy of a report investigating her claims of racial discrimination by the OCI dated August 2, 1996, her equal employment opportunity complaint, and an e-mail message stating that she was to hide everything on her desk, that the Packer group was planning a surprise for her, and a cassette recording of her unemployment hearing before a State of Wisconsin administrative law judge, a November 26, 1996 unemployment decision by the State of Wisconsin administrative law judge, a February 18, 1997 unemployment decision by the Appeal Tribunal of the State of Wisconsin regarding her state claim for unemployment benefits. The e-mail message did not note who the message was from, did not refer to any of the incidents which appellant claimed contributed to her emotional condition, and thus is not of sufficient probative value to establish appellant's claim for harassment. Furthermore, the OCI report concluded that there was no basis for appellant's allegations of discrimination. The unemployment decisions by the State of Wisconsin administrative law judge and the Appeal Tribunal of the State of Wisconsin regarding appellant's unemployment compensation are not relevant to the issue at hand, whether appellant had been harassed or suffered discrimination as she alleged. Appellant, therefore, has not submitted sufficient evidence corroborating his allegations of harassment and racial discrimination and thus has not established a compensable factor of employment.

The decisions of the Office of Workers' Compensation Programs dated August 23 and March 17, 1998 are hereby affirmed.¹⁵

¹³ See *Richard J. Dube*, 42 ECAB 916 (1991).

¹⁴ *Kathleen D. Walker*, 42 ECAB 603 (1991).

¹⁵ The Board notes that the record contains some medical evidence erroneously associated with this appellant.

Dated, Washington, D.C.
April 18, 2000

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member