

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOAN BOCKENSTEDT and DEPARTMENT OF THE AIR FORCE,  
AIR FORCE BASE, El Segundo, CA

*Docket No. 98-2362; Submitted on the Record;  
Issued August 3, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant established that she sustained an emotional condition while in the performance of duty.

In the present case, appellant, then a 43-year-old fitness program trainer, filed a notice of occupational disease on April 16, 1998 alleging that she sustained a stress disorder, depression, and a stress-induced exacerbation of her diabetes as a result of her federal employment. In this regard, appellant alleged she was given unreasonable work demands,<sup>1</sup> subjected to a hostile work environment, required to falsify reports, forced to treat civilian personnel differently than military personnel, had her "employee rights" violated, and was forced to work under multiple and conflicting supervisors who made unreasonable demands. By decision dated July 16, 1998, the Office of Workers' Compensation Programs rejected appellant's claim because she failed to establish a condition arising out of and in the course of 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.<sup>2</sup> On the other hand, the disability is not covered where it results from such factors as an

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<sup>1</sup> Appellant filed an earlier claim for an emotional condition on April 1, 1996 alleging that she was subjected to unreasonable work demands. The Office denied this claim on January 29, 1997 and the Board lacks jurisdiction to consider that decision because appellant did not file an appeal within one year of the date of that decision; *see Oel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2). Moreover, appellant's representative only requested an appeal of the Office's decision dated July 16, 1998.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup>

In the present case, appellant generally asserted that she was required to work in a hostile environment and that her "employee rights" were violated. Appellant, however, failed to support this general allegation of harassment with any reliable or probative evidence. Appellant's mere perception of harassment is not compensable.<sup>6</sup> In addition, appellant's supervisor, Lieutenant Maryelizabeth Schwieter, denied that any hostile environment existed or that her rights were denied. Consequently, appellant's allegation of workplace hostility and the denial of her employee rights, fails to constitute a compensable factor of employment.

Appellant alleged that the employing establishment forced her to falsify reports for inspections and improperly forced her to treat civilian personnel differently than military personnel. Nevertheless, appellant also failed to support these allegations with any evidence that the alleged events actually occurred. Appellant's supervisor denied that appellant was required to falsify reports and stated that appellant was only required to follow military custom and courtesy in dealing with patrons. Because appellant failed to support her allegations with any corroborating evidence, they are not established as factual.<sup>7</sup>

Appellant, however, also alleged that multiple supervisors imposed unreasonable and conflicting work demands on her since January 1996, which resulted in her emotional condition. The Board notes that emotional reactions to situations in which an employee is trying to meet her positional requirements are compensable.<sup>8</sup> Moreover, appellant established the factual aspect of this allegation based on the May 26, 1996 letter from Major Lane Pelivanov, appellant's

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<sup>3</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>5</sup> *Id.*

<sup>6</sup> *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

<sup>7</sup> *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

<sup>8</sup> *Annie L. Livermore*, 46 ECAB 425 (1995).

supervisor at that time. Major Pelivanov stated that the employing establishment's "AF Fitness Program" was a major change since they did not receive the materials and software for the program until January 1996 and were expected to implement it the same month. He stated that appellant told him that the deadlines for the program were unrealistic. Major Pelivanov agreed that the program's deadline was unrealistic and stated that appellant would not be able to do a perfect job in order to meet the deadline. Accordingly, appellant has established the demands of her regular work duties and she has established this as a compensable factor of employment.<sup>9</sup>

Because appellant has established a compensable factor of employment, the Office must base its decision on the analysis of the medical evidence. As the Office found that there were no compensable employment factors, it did not analyze or develop the medical evidence. The case therefore will be remanded to the Office for this purpose.<sup>10</sup> After such further development as deemed necessary, the Office should issue an appropriate decision on this matter.

The decision of the Office of Workers' Compensation Programs dated July 16, 1998 is set aside and the case remanded for further action consistent with this decision.

Dated, Washington, D.C.  
August 3, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>9</sup> *Id.*

<sup>10</sup> See *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).