

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBRA J. PRUITT and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Birmingham, AL

*Docket No. 99-837; Submitted on the Record;
Issued August 8, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that she developed an emotional condition in the performance of duty, causally related to compensable factors of her employment.

On November 4, 1997 appellant, then a 46-year-old claims clerk, filed a claim alleging that she developed a stress-related illness, causally related to harassment by management and to a hostile work environment. Appellant stopped work on October 2, 1997 and returned on October 14, 1997. The employing establishment controverted appellant's claim.

Appellant alleged that when she returned to work on October 14, 1997 she was advised by her supervisor that there would be a change in procedures for handling veterans' records, implemented in about two weeks and stated that she disagreed with this new procedure. Appellant alleged that her supervisor, Vicki Keahey was unprofessional in her manner towards appellant regarding a new work assignment, which worsened as time passed. Appellant indicated that she had filed an Equal Employment Opportunity (EEO) complaint.

Appellant also requested donated leave to cover her absences.

By letter dated November 5, 1997, appellant alleged that she was subjected to harassment by management and by her supervisor due to her filing the EEO complaint. Appellant claimed that Ms. Keahey took every opportunity to provide a stressful environment for her by "pulling the other clerk from her work site so that she had to carry the full load designed for two persons for incoming patients."

By letter dated December 2, 1997, the Office of Workers' Compensation Programs advised appellant that the evidence of record was insufficient to establish her claim and it requested that she submit a detailed list of the employment factors implicated in the causation of her condition, supporting witness statements and a detailed medical report supporting causation.

Medical evidence was also submitted.

Ms. Keahey provided a statement regarding the incident alleged by appellant, which actually occurred on September 16, 1997 when Ms. Keahey gave appellant and Mr. Watts a list of pending patients and advised them that it was the only list that they should be working from. Ms. Keahey noted that Mr. Watts indicated understanding of the instructions but that appellant stated: “[S]o you are telling me not to work on my ineligibles.” Ms. Keahey responded that that was not what she had said and appellant responded that she was grown so Ms. Keahey did not have to talk to her like that. Ms. Keahey countered that she was also grown and did not expect appellant to talk to her like that.

Mr. Watts also provided a November 12, 1997 statement alleging that a negative and counter productive atmosphere existed within the eligibility office, as each morning when he greeted appellant with “good morning” he received only a grunt or no reply from appellant. Mr. Watts alleged that, if he asked appellant questions, she told him to ask his supervisor, when he had questions relating to eligibility and he opined that he was in the middle of a personal conflict with appellant ranging from her actions of leaving customers waiting for him to serve if their last four digits of their social security numbers did not fall within her numbers. Mr. Watts noted that appellant refused to help him or work beyond her numbers 50 through 99. Mr. Watts noted that appellant rolled her eyes as he relayed a message from the chief and that she had brought undue stress into the workplace. He stated that he had given appellant no reason for her conflict with him or for her negative attitude towards him.

In a November 13, 1997 statement, Mr. Watts noted that he picked up records from family services, brought them to the eligibility office and gave appellant the charts numbered 50 through 99, but that when he returned to the office after a brief break he found the charts numbered 50 through 99 in his chair. When he asked appellant why the charts were there, she responded that when she was through with charts she was through with them. Mr. Watts advised appellant that this time he would return her charts to records, but that in the future she would have to take her own charts back. He noted that appellant became loud and said “you do n[o]t tell me what to do and I did n[o]t ask for your help anyway.” He noted that appellant cursed him several times and stated “you walk around here with your ass in the air [as] if something is wrong with you --.” Mr. Watts noted that appellant stated that she was tired of this petty stuff and with him picking on her and reiterated that she was not a child and that she deserved the same respect he gave other employees. Mr. Watts reiterated that he had given appellant no reason to exhibit the behavior she did towards him.

In a November 18, 1997 statement, the chief of ambulatory care and processing noted that he had no knowledge of appellant’s employment-related stress claim, that, when he questioned Mr. Watts who allegedly witnessed an exchange between Ms. Keahey and appellant, he determined that appellant herself may be the cause of the hostile atmosphere, that, when Mr. Watts was removed from eligibility, it was not to harass appellant, but to provide clerical coverage for a clinic and that he had no knowledge of attacks by management against appellant in support of or in retaliation for her EEO complaint.

In a November 19, 1997 statement, Ms. Keahey noted that appellant requested time off due to stress, but did not indicate that it was work related, that she had requested leave on several occasions related to her ulcers and that due to vacancies in that section management had to pull

employees to cover different areas. Ms. Keahey denied that she ever harassed appellant, that she was unaware of anyone else harassing appellant and that she never made any hostile statements to appellant, nor had anyone else in her presence.

By statement dated December 10, 1997, appellant discussed her implicated employment factors, appellant alleged that Ms. Keahey pulled the second eligibility clerk, leaving appellant to complete all eligibility procedures and dental applications, answer both telephones and answer patient and family questions; appellant alleged that after this had occurred several times Ms. Keahey asked appellant what progress had been made on the pending verification list and she responded that she had been doing the work of two people and that according to manning three persons should be assigned to that unit. Ms. Keahey allegedly replied that the work must be done, which made appellant so angry with extreme rage that she really wanted to hurt Ms. Keahey and to resign. Appellant accused Ms. Keahey of being rude, nasty and unprofessional for two years. Appellant alleged that she was to give an in-service on eligibility procedures, that Ms. Keahey forgot to inform other employees and that no one showed up, which made her very angry. Appellant considered it to be a joke played on her. She filed an EEO complaint alleging that she was performing two jobs. Appellant alleged that she received an e-mail from Ms. Keahey informing her that she had not completed all her work and she advised Ms. Keahey that she had completed all the work. Appellant alleged that she was enraged and hurt because of the accusation. Appellant alleged that she agreed to work overtime but was then told she had to do Mr. Watt's work during that period, which left her angry and upset. Appellant alleged that Ms. Keahey changed the procedures from working on designated number series to working on a first-come, first-serve basis, which she claimed was very unfair because she had done her numbers and this was a ploy to get her to do Mr. Watt's work. Appellant refused to do "Mr. Watt's" work. Appellant alleged that Ms. Keahey checked her work behind her, which was irritating and that, if she finds an error, she was rude and nasty in front of other employees.

In a January 6, 1998 report, Dr. M. Bennet Broner, a clinical psychologist, noted that appellant was preoccupied with her problems identified as dissatisfaction with her supervisor and he diagnosed "major depressive disorder, single episode, severe with mood congruent psychotic features, personality disorder, occupational problems," and moderately impaired global assessment functioning. Dr. Broner noted that appellant's hyperthyroidism needed treatment as it may be playing a role in her affective status.

On February 9, 1998 appellant was reassigned to a position with no veteran contact by phone or in person.

By decision dated June 22, 1998, the Office rejected appellant's emotional condition claim finding that she had failed to implicate any compensable factors of employment.

By letter dated July 22, 1998, appellant requested reconsideration of the June 22, 1998 decision. Appellant stated that her new evidence and legal arguments would be submitted within the next 30 days.

Nothing further was received by the Office.

By decision dated August 31, 1998, the Office denied appellant's request for a review of her claim on its merits, finding that she neither raised substantive legal questions nor included new and relevant factual or medical evidence.

The Board finds that appellant has failed to establish that she developed an emotional condition in the performance of duty, causally related to compensable factors of her employment.

To establish appellant's occupational disease claim that she has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.¹ Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.²

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. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition, which will be covered under the Federal Employees' Compensation Act. Generally speaking, when an employee experiences an emotional reaction to his or her regular or special assigned employment duties or to a requirement imposed by his employment or has fear or anxiety regarding his or her ability to carry out assigned duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.³ Conversely, if the employee's emotional reaction stems from employment matters, which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment and does not come within the

¹ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² *Id.*

³ *Donna Faye Cardwell*, *supra* note 1, see also *Lillian Cutler*, 28 ECAB 125 (1976).

coverage of the Act.⁴ Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be “in the performance of duty.”⁵

When working conditions are alleged as factors in causing 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.⁶ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁷ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.⁸ If the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant’s emotional condition, then the medical evidence of record need not be considered.

In the present case, the Office properly found that none of the causative factors appellant alleged were compensable factors of employment.

In this case, appellant alleged that she was harassed by the actions and words of Ms. Keahey. Appellant did not allege that she developed an emotional condition arising out of her regular or specially assigned duties, or out of specific requirements imposed by her employment. She alleged, for the most part, that her condition was caused by supervisory harassment. The Board has held that actions of an employee’s supervisor, which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.⁹ However, in order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.¹⁰ The Board finds that appellant has failed to submit any specific, reliable, probative and substantial evidence in the form of witness statements or EEO findings in support of her allegations of harassment. Appellant has the burden of establishing a factual basis for her allegations, however, the allegations in question are

⁴ *Id.*

⁵ See *Joseph Dedenato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

⁶ See *Barbara Bush*, 38 ECAB 710 (1987).

⁷ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁸ See *Gregory J. Meisenberg*, 44 ECAB 527 (1993).

⁹ *Sylvester Blaze*, 42 ECAB 654 (1991).

¹⁰ *Ruthie M. Evans*, *supra* note 7.

not supported by specific, reliable, probative and substantial evidence and have been refuted by statements from appellant's supervisors and coworker. Accordingly, the Board finds that these allegations cannot be considered to be compensable factors of employment since appellant has not established a factual basis for them.

Appellant also alleged that Ms. Keahey was unprofessional, rude and nasty towards her, but she failed to provide any corroboration of these allegations. Consequently, these allegations are unsupported by the case record.

Several of appellant's allegations of employment factors that caused or contributed to her condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*,¹¹ 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.¹² 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: Appellant's coworker being pulled for a different assignment,¹³ supervisory oversight of appellant's work,¹⁴ policy changes¹⁵ and lack of attendance at the in-service session.¹⁶ Appellant has presented no evidence of administrative supervisory error or abuse in the performance of these actions and, therefore, they are not compensable now under the Act.

Appellant also alleged that she was upset by an e-mail from Ms. Keahey but there was no evidence presented that such e-mail was abusive or harassing. No copy of the e-mail in question was submitted to the record. Therefore, appellant has not established that this factor constituted administrative error or abuse.

Appellant alleged that no one came to her in-service session due to Ms. Keahey's oversight, which upset her, but there was no evidence presented that the oversight was deliberate. Further, matters involving training of employees, is an administrative function and appellant presented no evidence of error or abuse.¹⁷

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

¹² See *Richard J. Dube*, 42 ECAB 916 (1991).

¹³ See, e.g., *Helen Casillas*, 46 ECAB 1044 (1995); *Alice M. Washington*, 46 ECAB 382 (1994) (assignments of personnel is an administrative function and is not compensable, absent evidence of error or abuse.)

¹⁴ *Id.*

¹⁵ See *David W. Shirey*, 42 ECAB 783 (1991).

¹⁶ See, e.g., *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

¹⁷ *Id.*

Appellant alleged that she was performing two jobs, but the Board notes that she agreed to work overtime until she found out that the cases she was to work on had formerly been assigned to a coworker. The Board has held that overwork may be a compensable factor of employment.¹⁸ However, the evidence in this record is insufficient to establish that appellant was in fact overworked and no other evidence substantiating claims of overwork was submitted.

The Board notes that evidence of record suggests that appellant herself was the source of the alleged hostile work environment. Therefore, this must be considered self-generated and not compensable under the Act.

As appellant has failed to implicate any compensable factor of her federal employment in the development of her emotional condition, the medical evidence need not be considered.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated August 31 and June 22, 1998 are hereby affirmed.

Dated, Washington, D.C.
August 8, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

¹⁸ See *Robert W. Wisenberger*, 47 ECAB 406 (1996); *William P. George*, 43 ECAB 1159 (1992).