

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANNETTE DALEY and FEDERAL DEPOSIT INSURANCE  
CORPORATION, OFFICE OF INSPECTOR GENERAL, Washington, DC

*Docket No. 99-1056; Submitted on the Record;  
Issued August 7, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has established an emotional condition causally related to compensable factors of her federal employment.

In the present case, appellant filed a claim on December 29, 1997 alleging that she sustained an emotional condition due to mistreatment and unfairness by the employing establishment. By decision dated December 9, 1998, the Office of Workers' Compensation Programs denied the claim on the grounds that appellant had not established a compensable factor of employment as contributing to an emotional condition.

The Board has reviewed the record and finds that appellant has not established an emotional condition causally related to compensable factors of her federal employment.

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.<sup>1</sup> To establish her claim 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 disorder; and

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<sup>1</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

(3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>2</sup>

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 coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where 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.<sup>3</sup>

In the present case, appellant has asserted that she was not treated fairly by the employing establishment. She indicated in a June 1998 statement that she had difficulty with supervisors since 1986 and felt that she was not treated as other employees. According to appellant she filed a complaint with the Equal Employment Opportunity Commission (EEOC) in November 1997. With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers, which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.<sup>4</sup> An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.<sup>5</sup> Appellant alleges, for example, that she did not receive promotions or bonuses and that supervisors did not respect her and talked negatively about her to others. The record does not, however, contain probative evidence of harassment or discrimination. There are no findings by the EEOC, no witness statements with firsthand knowledge of specific allegations of harassment or discrimination, or other probative evidence that would support a claim based on harassment or discrimination in this case.

The evidence that appellant did submit in support of her claim consists primarily of performance appraisals that she had received. It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.<sup>6</sup> The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the

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<sup>2</sup> See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

<sup>5</sup> *Helen P. Allen*, 47 ECAB 141 (1995).

<sup>6</sup> *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

evidence discloses error or abuse by the employing establishment.<sup>7</sup> In this case, the record contains no evidence of error or abuse with respect to an administrative matter. Appellant indicated that she was upset by some 1992 written comments from a supervisor made in connection with a performance evaluation, but there is nothing in the comments or any of the performance evaluations that can be considered erroneous or abusive. She did not provide any specific evidence of error or abuse with respect to an administrative or personnel matter.

The Board accordingly finds that appellant did not allege and substantiate a compensable factor of employment as contributing to an emotional condition. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.<sup>8</sup>

The decision of the Office of Workers' Compensation Programs dated December 9, 1998 is affirmed.

Dated, Washington, D.C.  
August 7, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Member

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<sup>7</sup> See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>8</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).