

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEVERLY K. HARRIS and DEPARTMENT OF THE ARMY,
NATIONAL TRAINING CENTER, Fort Irwin, CA

*Docket No. 98-2164; Submitted on the Record;
Issued March 2, 2000*

DECISION and ORDER

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

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

In the present case, appellant filed a claim on June 12, 1997 alleging that she sustained emotional stress causally related to her federal employment. In an undated statement, appellant asserted that she had been subject to racial discrimination, and described incidents at work from January 6 to May 13, 1997. The record also contains a letter of counseling dated May 13, 1997 from appellant's supervisor.

By decision dated May 26, 1998, the Office of Workers' Compensation Programs determined that appellant had not established an injury in the performance of duty. The Office found that appellant had not established a compensable factor of her federal employment as contributing to an emotional condition.

The Board has reviewed the record and finds that appellant has not established an injury in the performance of duty.

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.¹ 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

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

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 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 her 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.³

Appellant's primary claim appears to be that she was subject to harassment and discrimination by a coworker, Ms. Winter. The Board has held that actions of an employee's supervisors or coworkers that the employee characterizes as harassment or discrimination 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.⁴ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁵

The record contains an Equal Employment Opportunity (EEO) counselor's report, indicating that appellant initiated contact with the EEO office on February 18, 1997. The report provides a brief description of appellant's allegations, but no findings were made,⁶ nor does the record contain other probative evidence of harassment or discrimination. In the absence of probative and reliable evidence, the Board finds that appellant has not met her burden to establish a compensable factor of employment based on harassment or discrimination.

The record also indicates that appellant filed a grievance on May 14, 1997, stating that she was subject to physical and verbal abuse by coworker Thomas Nickens during a counseling session. Such an allegation, when sufficiently detailed and supported by the evidence of record, may constitute a compensable factor of employment.⁷ In a letter dated May 20, 1998, appellant's supervisor stated that he was a witness to the May 13, 1997 incident, and there was

² See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

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

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

⁵ *Helen P. Allen*, 47 ECAB 141 (1995).

⁶ The EEO counselor's report briefly stated that "several witnesses felt [appellant] is treated differently because of her race [and] color, others feel it is a personality problem between [appellant] and Ms. Winter."

⁷ *Garry M. Carlo*, 47 ECAB 299 (1996).

no physical or verbal assault by Mr. Nickens. The Board is unable to find any probative evidence to establish a compensable factor with respect to the May 13, 1997 incident.

Accordingly, the Board finds that appellant has not substantiated a compensable factor of employment. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.⁸

The decision of the Office of Workers' Compensation Programs dated May 26, 1998 is affirmed.

Dated, Washington, D.C.
March 2, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁸ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).