

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of INGRID S. SAMSON and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Biloxi, MS

*Docket No. 98-933; Submitted on the Record;
Issued September 1, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
VALERIE D. EVANS-HARRELL

The issue is whether appellant established that her claimed disability subsequent to March 10, 1992 is causally related to her accepted emotional condition.

On January 27, 1993 appellant, then a 56-year-old secretary, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained an emotional condition as a result of being subjected to verbal, physical and mental harassment at work over a period of six years. She identified May 1, 1991 as the date she first became aware of her employment-related emotional condition. Appellant ceased working on August 23, 1992. In subsequent statements, appellant explained that her former supervisor, Mr. Dale E. Eadie, sexually harassed her for several years prior to his resignation in March 1992. She further explained that her new supervisor, Ms. Colleen Elliott-Earle, also made offensive remarks of a sexual nature. Additionally, appellant indicated that Ms. Elliott-Earle improperly reassigned her to a different position and punished her by placing her in a rather small office. She alleged that these actions were done in retaliation for having testified about her prior supervisor's conduct. Appellant also took issue with the employing establishment's handling of various leave requests. She claimed that the above-noted series of events contributed to her diagnosed condition of adjustment disorder and her inability to perform her duties during the period of August 23, 1992 through November 1, 1993.

After further development of both the factual and medical record, the Office of Workers' Compensation Programs issued a decision dated July 6, 1994 accepting appellant's claim for adjustment disorder with anxiety. The Office found that appellant had been subjected to sexual harassment by her former supervisor, Mr. Eadie, and that his misconduct over a period of years represented a compensable employment factor. Additionally, the Office determined that appellant's accepted condition had resolved by March 10, 1992, the date he resigned his position with the employing establishment. With respect to the allegations pertaining to appellant's subsequent supervisor, Ms. Elliott-Earle, the Office determined that these incidents did not

represent compensable employment factors. Consequently, the Office denied appellant's claim for wage-loss compensation subsequent to March 10, 1992.

The Office's July 6, 1994 decision was subsequently affirmed by an Office hearing representative in a January 22, 1996 decision, finalized January 23, 1996. Thereafter, appellant sought reconsideration on four occasions. In each instance, the Office denied modification of the prior determination that appellant's employment-related emotional condition had resolved by March 10, 1992, *i.e.*, September 20, 1996, January 17 and May 12, 1997. The Office issued its most recent merit decision denying modification on October 24, 1997.

The Board finds that appellant failed to establish that her claimed disability subsequent to March 10, 1992 is causally related to her accepted emotional condition.

In order to establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (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 condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition or psychiatric disorder is causally related to the identified compensable employment factors.¹

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.²

As previously noted, the Office recognized as a compensable employment factor the sexual harassment appellant had been subjected to by her prior supervisor, Mr. Eadie. However, with respect to the alleged incidents following Mr. Eadie's departure in March 1992, the Office determined that appellant failed to implicate or substantiate any compensable employment factors. Approximately two months after Mr. Eadie's departure, appellant came under the supervision of Ms. Elliott-Earle. On August 17, 1992 Ms. Elliott-Earle advised appellant that, effective August 31, 1992, she would no longer be working as her personal secretary and would be reassigned to a position as program assistant, with no loss in pay. Appellant expressed dissatisfaction with the proposed personnel action and she ceased working approximately one week after Ms. Elliott-Earle advised her of the upcoming reassignment.

Appellant's emotional reaction to Ms. Elliott-Earle's decision to reassign her in August 1992 is not compensable. Similarly, appellant's adverse reaction to being assigned a less than

¹ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

² *Lillian Cutler*, 28 ECAB 125 (1976).

desirable office, which appellant described as a “cubbyhole,” is also noncompensable. As noted, an employee’s frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.³ The Office properly advised appellant of this fact on several occasions. Appellant’s allegation that these acts were done in retaliation for having provided testimony against her former supervisor is unsubstantiated. Moreover, although the employing establishment agreed to a settlement regarding appellant’s various formal complaints, this alone does not demonstrate that the employing establishment acted improperly in discharging its administrative and personnel responsibilities and the record does not otherwise support such a finding.⁴

Appellant also failed to substantiate her allegation that Ms. Elliott-Earle made sexually offensive remarks. Appellant alleged that on August 3, 1992 Ms. Elliott-Earle stated that a rash appellant had on her eye lids was due to “lack of sex.” Ms. Elliott-Earle purportedly made a similar remark a few days later. When questioned by both the employing establishment and the Office, Ms. Elliott-Earle repeatedly denied making the offensive remarks appellant attributed to her. Inasmuch as appellant did not provide any evidence to corroborate her allegation, she has failed to establish that she was subjected to either sexual harassment or verbal abuse by Ms. Elliott-Earle.⁵

Appellant also alleged that the employing establishment harassed her by refusing to place her on leave-without-pay status (LWOP). In December 1992, after appellant exhausted all of her available sick and annual leave, the employing establishment placed her on absent-without-leave status. The employing establishment subsequently changed appellant’s status to LWOP. Although the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁶ In the absence of evidence that the employing establishment erred or acted abusively in addressing appellant’s leave requests, the incident regarding appellant’s leave status is not compensable.⁷ Appellant has not demonstrated that the employing establishment acted improperly in handling her leave requests.

The Board also finds that appellant failed to establish that she has any continuing disability after March 10, 1992 causally related to her accepted emotional condition.

³ *Id.*

⁴ As a general rule, an employee’s reaction to administrative or personnel matters falls outside the scope of the Federal Employees’ Compensation Act. However, to the extent that the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor. *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

⁵ While verbal abuse is compensable under certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act. *Leroy Thomas, III*, 46 ECAB 946, 954 (1995).

⁶ *Dinna M. Ramirez*, *supra* note 4.

⁷ *Id.*

In determining that appellant's accepted emotional condition had resolved by March 10, 1992, the Office relied on the June 23, 1994 report of Dr. Henry A. Maggio, a Board-certified psychiatrist and an Office referral physician. Dr. Maggio explained that appellant's diagnosed condition of adjustment disorder with anxiety was initially caused by the conduct of her former supervisor, Mr. Eadie. He explained, however, that this condition abated when Mr. Eadie resigned in March 1992. Dr. Maggio further indicated that appellant did not suffer any disability as a result of Mr. Eadie's sexual harassment inasmuch as she never complained, stopped work or sought medical treatment during the period of time she was subjected to Mr. Eadie's harassment. In Dr. Maggio's opinion, appellant's adjustment disorder was exacerbated when she was faced with a new supervisor and was advised of her forthcoming transfer to a position appellant did not wish to hold.

Appellant has submitted a number of reports from at least four health care professionals, including a gynecologist and an internist, who have indicated that her disability during the period August 1992 through November 1993 was work related and more specifically, due to the harassment she received from both Mr. Eadie and Ms. Elliott-Earle. Inasmuch as the alleged incidents involving Ms. Elliott-Earle have been found to be noncompensable employment factors, any disability attributable to those incidents is not covered under the Act. The remaining question is whether the evidence establishes that appellant was disabled during the claimed period as a result of the accepted harassment she received while under the supervision of Mr. Eadie.

Appellant was most recently examined in April 1997 by Pamela S. Cutrer, Ph.D., a clinical psychologist. Dr. Cutrer authored two reports, the most recent of which is dated August 6, 1997. She indicated that, while appellant's emotional condition had resolved, the predominant reason for her past disability was "on-the-job stress during the period August 1992 to November 1993." It is noted that appellant was not working during a majority of the period cited by Dr. Cutrer. She further explained that appellant's condition was consistent with that of a sexual harassment victim and that this condition was exacerbated by the treatment she received while under the supervision of Ms. Elliott-Earle. Again, any disability associated with Ms. Elliott-Earle's behavior toward appellant is noncompensable. While Dr. Cutrer attributes appellant's condition to the combined effects of the treatment she received from both Mr. Eadie and Ms. Elliott-Earle, her report, much like the earlier evidence of record, fails to provide any clear explanation for the delayed onset of appellant's disability ostensibly attributable to Mr. Eadie's sexual harassment. As Dr. Maggio pointed out in his June 23, 1994 report, appellant's diagnosed condition of adjustment disorder with anxiety apparently did not result in any disability prior to Mr. Eadie's departure in March 1992, as evidenced by the fact that appellant never complained, stopped work or sought medical treatment during the period of time

she was subjected to Mr. Eadie's harassment.⁸ Thus, it is unclear how appellant was able to endure this treatment without any resultant disability through March 1992, but approximately five months after Mr. Eadie's departure she became disabled from work as a result of his prior sexual harassment. In the absence of such an explanation, Dr. Cutrer's recent opinion, as well as the prior opinions of Drs. J. Hurd Gaddy, Boyd P. Benefield and William Gasparrini, are clearly insufficient to establish that appellant sustained any disability subsequent to March 1992 causally related to her accepted employment condition.⁹ Accordingly, the Office properly denied modification of its prior decision.

The October 24, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
September 1, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Valerie D. Evans-Harrell
Alternate Member

⁸ The term "disability" means the incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury. *Shirley A. Temple*, 48 ECAB 404, 407 n. 10 (1997). Every injury does not necessarily cause disability for employment. Whether a particular injury causes disability for employment is a medical issue which must be resolved by competent medical evidence. *Patrick H. Hall*, 48 ECAB 514, 516 n. 11 (1997).

⁹ *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (the Board found that a medical opinion not fortified by medical rationale is of little probative value).