

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VONCEL KNIGHT and U.S. POSTAL SERVICE,
PERSONNEL SERVICES, Coppell, TX

*Docket No. 99-492; Submitted on the Record;
Issued September 8, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

On November 11, 1997 appellant, then a 49-year-old human resources associate, filed a claim for "stress" which she attributed to employees calling her and saying that maintenance managers were trying to get her out of her job, inability to get questions about her job answered by her supervisor, job postings being pulled without giving her an opportunity to do corrections, managers preventing her from getting a promotion, and a labor representative falsely using her name in a hearing. She stopped work on November 7, 1997.

In a statement accompanying her claim form, appellant stated that in May 1997 she started a new job at the employing establishment that was "very different from any other position" she had held there and required knowledge of a variety of functions. She alleged that the training she received for two weeks from the prior holder of this position "was n[o]t extremely thorough," that her supervisor responded to her questions by telling her that she should know and that she became uncomfortable asking her supervisor for help. Appellant stated that a meeting was held at her request to address the way her supervisor talked to her and did not answer her questions, and that as a result she and her supervisor began meeting daily, with the meetings consisting of each asking the other if she had offended her that day. She also described a problem with a posting for a job she had done, which was canceled by her supervisor, a change so that jobs were posted on Mondays and a situation in which a maintenance manager returned a posting to her without any explanation. Appellant also stated that she was required to work 15 hours of overtime to complete filing from her previous position and that she had to answer transferred telephone lines making it nearly impossible to perform her duties effectively.

In a statement responding to appellant's claim form and accompanying statement, appellant's supervisor stated that appellant was allotted 15 hours of overtime to complete the filing from her prior job after she obtained her maintenance processing job in May 1997, that the former holder of appellant's new position informed the supervisor that he had trained appellant in every area of the job and that phone calls were transferred to appellant, as she had one of the three nonvoice mail phones in the office. Her supervisor further stated that appellant was having problems with routine procedures that should have been covered in her training, that appellant daily asked questions about normal procedures and that she responded to these questions by asking appellant if she had been shown that, by referring appellant to the handbook or sometimes by telling her she did not know but that it should be written somewhere. Appellant's supervisor then described problems with various job postings appellant had prepared, including two postings with the same number, a posting that had to be canceled because it was not prepared in time, appellant's failure to make requested corrections in postings, and appellant's insertion of new errors into corrected postings. Her supervisor also described other incorrect documents prepared or handled by appellant: a confusing supply order, a disapproval of reassignment letter containing an incorrect reason, an employee's letter in a different employee's folder and a reassignment letter containing an incorrect reporting date. Appellant's supervisor stated that it became "obvious [appellant] was not able to perform the duties of the position," that appellant was returned to her former duties effective November 10, 1997 and that appellant was informed of this reassignment on November 7, 1997, whereupon she said, "Then I [a]m out of here on stress! I [a]m on my way to injury compensation" and left.

By decision dated April 29, 1998, the Office found that the only factual and compensable factors of employment appellant had established were difficulty learning new procedures, trouble completing tasks she had been trained to do, and the requirement that she answer transferred telephone calls. The Office denied appellant's claim on the basis that there was no medical evidence relating appellant's condition to specific factors of her employment.

Appellant requested reconsideration, stating that she had made an error in a posting, that the canceled posting could have remained with one correction and that she had returned to work on April 1, 1998. She also submitted additional medical evidence. By decision dated June 1, 1998, the Office refused to modify its prior decision on the basis of the "continued absence of rationalized medical opinion evidence addressing causal relationship between your emotional condition and your federal employment." Appellant requested reconsideration, and submitted an additional medical report. By decision dated September 25, 1998, the Office found that the additional evidence was repetitious and not sufficient to warrant review of its prior decisions.

The Board finds that appellant has not established that she sustained an emotional condition in 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 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. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.¹

Some of the incidents and conditions to which appellant attributed her emotional condition are not considered compensable factors of employment that could give rise to coverage under the Act. Appellant's concern about rumors that maintenance managers wanted her out of her new job amounts to job insecurity, which is not a compensable factor under the Act.² Her inability to secure a desired promotion or reassignment is not considered a compensable factor of employment.³ A labor relations specialist's use of appellant's name at a hearing is not related to the duties appellant was hired to perform or to a requirement of appellant's job and is not a compensable factor of employment. Appellant has not shown any error or abuse in the training she was provided for the position she began in May 1997.⁴

Appellant has cited factors of her employment which can give rise to coverage under the Act. As found by the Office, in its April 29, 1998 decision, appellant cited and her supervisor substantiated that she had difficulty learning new procedures and trouble completing the tasks of the new position she began performing in May 1997. The Board has held that emotional reactions to situations in which an employee is trying to meet the requirements of his or her position are compensable.⁵ Her supervisor confirmed that appellant had problems with the procedures in her new position and provided specific examples thereof. Other requirements of appellant's employment that could give rise to coverage under the Act are the requirement that she answer transferred telephone calls and the requirement that she complete the filing from her prior position.

Appellant's burden of proof, however, is not discharged by the fact that she has established employment factors which may give rise to a compensable disability under the Act. She must also submit rationalized medical evidence establishing that her claimed condition is causally related to an accepted compensable employment factor.⁶ Appellant has not submitted such evidence. Her attending psychiatrist, Dr. K. Thomas Varghese, stated in a May 22, 1998 report that appellant "denies any history of depression prior to these work-related problems in late 1997. Therefore, it seems logical to me that the depression [appellant] has experienced is a result of the problems she has had at work." Although Dr. Varghese stated in this report that a list of the conflicts appellant reported to him was attached to the report, there is no such attachment in the case record. The only employment factors cited by Dr. Varghese in any of his

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Artice Dotson*, 42 ECAB 754 (1990).

³ *Donna J. DiBernardo*, 47 ECAB 700 (1996).

⁴ Training is generally considered an administrative matter, which is not covered under the Act in the absence of error or abuse. *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

⁵ *Anne L. Livermore*, 46 ECAB 425 (1995); *Joseph A. Antal*, 34 ECAB 608 (1983).

⁶ *Ezra D. Long*, 46 ECAB 791 (1995).

reports were “problems getting along with her manager at work and ... that her supervisor was not helpful to her either.” The work factors cited by Dr. Varghese are too general for his support of causal relationship to meet appellant’s burden of proof.⁷ The same is true of the reports of Dr. Sherrie Lahti, a clinical psychologist. In a report dated May 20, 1998, Dr. Lahti stated that appellant “felt overwhelmed because she thought she was being blamed unreasonably.” This does not cite a compensable or substantiated factor of employment, and Dr. Lahti’s citation of problems on the job as a major factor in appellant’s depression is too general to support a claim for compensation. Appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

The Board also finds that the Office properly refused to reopen appellant’s case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

Section 8128(a) of the Federal Employees’ Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease or increase the compensation awarded; or

(2) award compensation previously refused or discontinued.”

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁸

The only new evidence appellant submitted with her June 29, 1998 request for reconsideration was a June 11, 1998 report from Dr. Lahti stating that appellant was “mainly stressed due to a supervisor who she believed was blaming her about things for which she was not responsible. She was very concerned that the supervisor would not work with her on clearing up these issues. It appeared that this was a major factor contributing to her stress.” This report was essentially repetitive of Dr. Lahti’s May 20, 1998 report, and it therefore does not constitute a basis for reopening appellant’s case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

⁷ See *William P. George*, 43 ECAB 1159 (1992).

⁸ *Eugene F. Butler*, 36 ECAB 393 (1984).

The decisions of the Office of Workers' Compensation Programs dated September 25, June 1 and April 29, 1998 are affirmed.

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

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member