

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DION M. JONES and DEPARTMENT OF VETERANS AFFAIRS,  
FRESNO VETERANS ADMINISTRATION MEDICAL CENTER, Fresno, CA

*Docket No. 99-1646; Submitted on the Record;  
Issued September 6, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

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 federal employment.

On April 1, 1996 appellant, then a 30-year-old patient service assistant, filed a claim alleging that she developed an emotional condition including depression, stress, anxiety, nervousness, memory loss, uncontrollable crying, headaches, high blood pressure, an upset stomach and sleeplessness causally related to factors of her employment.<sup>1</sup> She alleged that she developed stress due to the employing establishment being short staffed and having employees off on vacation, due to constant harassment by supervisor, Shawndel Puckett, due to lack of training, due to backlogged work, due to being unable to complete reports because she had to cover the front desk, due to general overwork and overtasking, due to discrimination and due to being blamed for things for which she was not responsible. Appellant stopped work on April 5, 1996 and took sick and annual leave until April 12, 1996 when she went on leave without pay.

By decision dated July 17, 1996, the Office of Workers' Compensation Programs rejected appellant's claim finding that, although she had established compensable factors of employment including overwork and short staffing, the medical evidence submitted to the record did not support that appellant's diagnosed situational disorder developed due to the identified compensable factors. This decision was later combined with a subsequent emotional condition claim.<sup>2</sup>

On May 5, 1998 appellant filed another claim for the same symptoms noted above, and additionally for irritability, poor appetite, chest pains, unhappiness, her face breaking out and lack of concentration. She addressed having to ask for information, having to research old records and sheets for information, constant harassment, having her light-duty doctor's orders disregarded, having to remind her supervisor to fill out her Office claim paperwork and never

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<sup>1</sup> Claim No. 13-1105518.

<sup>2</sup> Claim No. 13-1162140.

receiving meeting paperwork of staff meetings which she was unable to attend. Appellant alleged that Ms. Puckett deliberately held certain reports over 100 days to make her look bad, that too much writing aggravated her injuries, that she was being forced to work like a person without disabilities, that she never received help, that she was not given a key, that the computer was not working, that she was isolated from others, that employees she did not know started harassing her and that she was being forced by Ms. Puckett to bring in sick slips or medical documentation for absences. She alleged that having different bosses was stressful, that she received no support from her supervisor, that other supervisors assigned her duties which were not among her modified duties, not having requested leave approval, having Ms. Puckett violate the confidentiality of her medical records, mental and physical abuse, being threatened and conspired against, and being denied accommodation for her injuries.

Ms. Puckett responded to appellant's allegations by noting that on April 3, 1998 appellant had a temper tantrum on the telephone due to the air conditioning hurting her and wanting to go home, started screaming at Ms. Puckett and exclaimed that she was on her way down to see Ms. Puckett. She noted that appellant did not show up. Ms. Puckett submitted a list of all the sick and annual leave approved for appellant during April and May 1998; she also noted that this was the fourth claim of stress/harassment made by appellant, that other supervisors did not direct appellant's work, that she had never harassed appellant, cursed her or demanded anything from her, that appellant's position was created especially for her light-duty assignment with only one program to support, and that appellant's requests for leave were never disregarded. She noted that appellant demanded immediate attention to her requests and would call and page her constantly until she reached Ms. Pucket, that she had been cornered by appellant and her mother in the hospital and in her office and that they created scenes that were embarrassing to the facility and to Ms. Puckett, that appellant claimed that she was being harassed because she was black, and that other employees' and Ms. Puckett's work suffered because of appellant's behavior. Ms. Puckett noted that she had never held up appellant's paperwork, that she had never violated any confidentiality regarding appellant, and that appellant believed that Ms. Puckett was the cause of her not being placed on disability, but that she had no part in that decision making. She noted that she had never abused appellant nor touched her, even in passing, that she had never conspired against appellant, and that she had had to call security to have appellant and her mother removed from Ms. Puckett's office. Ms. Puckett noted that she had been threatened by appellant more times than she could count, that appellant had threatened everybody around her, even social workers and psychologists, and that they all were being abused by appellant. She noted that appellant got special furniture and that people were bending over backwards for her but that she was treating everyone like dirt and then claiming that the same people were causing her to be permanently disabled. Ms. Puckett noted that appellant was revisiting things that happened for which she had made past claims, which were denied, and that appellant had been given a key and routinely locked her door for hours at a time when her husband, mother or child were with her. She noted that doctors and others felt that appellant's two-hour conversations with students in lieu of working was not creating the appropriate environment and that coworkers did not speak with appellant because of the way she had treated them.

In support of her claim, appellant submitted medical evidence addressing allegations made in support of her 1996 claim which confirmed that she had been treated, medical reports preceding her 1998 claim which reported her response to pharmacologic intervention and a March 21, 1997 report from Dr. Ahsan K. Bajwa, a Board-certified neurologist, who noted that

on December 17, 1996 appellant had passed out and who opined that “her syncopal episode is related to stress and exhaustion” and that she was “stressed and exhausted prior to this because of her overwork.”

Also submitted was a March 26, 1998 disability certificate signed by Dr. John J. Lubenko, a Board-certified family practitioner, who noted “off of work due to aggravation of injuries due to stress.”

An April 24, 1998 report from Michael De Anda, a licensed clinical social worker, which noted that appellant had major depression, a pain disorder and an adjustment disorder, and continued to experience difficulty due to unremitting pain and inflammation due to her medical condition including neck, shoulder, upper and lower back, left leg pain and knee swelling.

By letter dated October 20, 1988, the Office requested that appellant provide witness statements or other factual evidence in support of her specific allegations within 30 days. The Office also requested submission of medical evidence which causally related the development of appellant’s medical condition to the specific employment factors she had alleged.

No further material was received from appellant.

The employing establishment submitted a denial to appellant’s allegations and noted that if appellant did not get what she wanted she acted out, that appellant used inappropriate language towards her supervisor, that appellant directly threatened her supervisor and the staff and that the supervisor had suffered emotional abuse from appellant. The employing establishment compensation specialist noted that appellant’s demeanor was threatening, that she accused the specialist of lying and threatened to see her in court, that appellant had complained of asthma and was moved with her ergonomic chair to a different location where she sat and was seen napping or reading, that appellant had a chip on her shoulder, that she threatened that if the Office did not pay her she would hire an attorney because she had been hurt there, that appellant was a very rude young woman, that appellant yelled at her and that she was not going to take this rude behavior from appellant.

By decision dated November 20, 1998, the Office rejected appellant’s claim finding that none of the allegations of employment factors that she put forth were substantiated by factual evidence as having occurred as alleged. The Office further found that none of the medical evidence submitted supported the development of an emotional condition based upon compensable factors of employment.

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 federal employment.

An employee seeking benefits under the Federal Employees’ Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was

sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</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 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 Act. Generally speaking, when an employee experiences an emotional reaction to his or her regular or specially 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.<sup>6</sup> Conversely, if the employee's emotional reaction stems from employment matters which are not related to 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 coverage of the Act.<sup>7</sup> Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."<sup>8</sup>

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

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<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>5</sup> *Id.*

<sup>6</sup> *Donna Faye Cardwell*, *supra* note 4, *see also Lillian Cutler*, 28 ECAB 125 (1976).

<sup>7</sup> *Id.*

<sup>8</sup> *See Joseph Dedenato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> 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.

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*<sup>12</sup> 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.<sup>13</sup> 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: use of leave;<sup>14</sup> the handling of her OWCP claim paperwork;<sup>15</sup> not receiving staff meeting paperwork; not being given a key; having a computer that was not working;<sup>16</sup> and being required to submit medical documentation for her absences.<sup>17</sup> 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 her condition was caused by supervisory harassment. The Board has held that actions of an employee's supervisor which the employee characterizes as

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<sup>9</sup> See *Barbara Bush*, 38 ECAB 710 (1987).

<sup>10</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>11</sup> See *Gregory J. Meisenberg*, 44 ECAB 527 (1993).

<sup>12</sup> 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>13</sup> See *Richard J. Dube*, 42 ECAB 916 (1991).

<sup>14</sup> *Helen Casillas*, 46 ECAB 1044 (1995); *Maxine J. Sanders*, 46 ECAB 835 (1995).

<sup>15</sup> See *i.e. Bettina M. Graf*, 47 ECAB 687 (1996); *Thomas J. Costello*, 43 ECAB 951 (1992); *George A. Ross*, 43 ECAB 346 (1991); *Ralph O. Webster*, 38 ECAB 521 (1987).

<sup>16</sup> See *e.g., Jimmy Gilbreath*, 44 ECAB 555 (1993).

<sup>17</sup> See *i.e., Dinna M. Ramirez*, 48 ECAB 308 (1997); *see also Anthony A. Zarcone*, 44 ECAB 751 (1993).

harassment may constitute factors of employment giving rise to coverage under the Act.<sup>18</sup> 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.<sup>19</sup> The Board finds that appellant has failed to submit any specific, reliable, probative and substantial evidence in support of her allegations. Appellant has the burden of establishing a factual basis for her allegations, however, the allegations in question are not supported by specific, reliable, probative and substantial evidence and have been refuted by statements from appellant's employer. 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 complained of being isolated from others and not being accommodated due to her physical problems. The Board has frequently stated that disability is not covered where it results from an appellant's frustration from not being permitted to work in a particular environment,<sup>20</sup> and notes that her allegations of not being accommodated were contradicted by the employing establishment, and are, therefore, not substantiated as factual.

The remainder of appellant's allegations were not supported by factual evidence and therefore, as the Office properly found, she has not established that they occurred as alleged.

However, since appellant, in her 1996 claim, did establish two compensable factors of employment, overwork and short staffing,<sup>21</sup> the Board will examine the medical evidence of record to ascertain whether it supports that appellant developed an emotional condition, causally related to either of these two factors.<sup>22</sup>

Appellant submitted several medical reports preceding her 1998 claim which reported her response to pharmacologic intervention. As these reports did not contain opinions as to the causation of the conditions found, they are not probative on the issue of whether appellant developed an emotional condition causally related to overwork and short staffing. A March 21, 1997 report from Dr. Ahsan K. Bajwa noted that on December 17, 1996 appellant had passed out, and opined that "her syncopal episode is related to stress and exhaustion" and that she was "stressed and exhausted prior to this because of her overwork." Although this report does mention overwork, without identifying any particular period or duration, it identifies the consequential injury due to the overwork as a syncopal episode resulting in appellant passing out, and not the development of a disabling emotional condition. Consequently, this report is insufficient to establish appellant's emotional condition claim.

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<sup>18</sup> *Sylvester Blaze*, 42 ECAB 654 (1991).

<sup>19</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>20</sup> *See Clara T. Norga*, 46 ECAB 473 (1995).

<sup>21</sup> *See Robert W. Wisenberger*, 47 ECAB 406 (1996).

<sup>22</sup> Appellant's burden of proof is not discharged by the fact that she has established employment factors which may give rise to a compensable disability under the Act. Appellant must also submit rationalized medical evidence establishing that her claimed emotional condition is causally related to an accepted compensable factor of employment. *Brian E. Flescher*, 40 ECAB 532 (1989); *Ronald K. White*, 37 ECAB 176 (1983).

Dr. Lubenko's brief disability certificate has this same problem, noting that appellant was off work due to aggravation of injuries due to stress. No disability due to an emotional condition was identified, and consequently, this certificate is also insufficient to establish appellant's claim.

Lastly, a report was submitted from Mr. De Anda, a licensed clinical social worker. As a license social worker is not considered to be a physician under the Act, this report cannot be considered as probative medical evidence.<sup>23</sup>

As appellant has failed to establish any compensable factors of her employment as causing her emotional condition in her 1998 claim, she has failed to meet her burden of proof; as she failed to submit any rationalized medical evidence identifying the accepted compensable factors from her 1996 claim as causative in the development of her 1996 emotional condition, she again has failed to establish her claim.

Accordingly, the decision of the Office of Workers' Compensation Programs dated November 20, 1998 is hereby affirmed.

Dated, Washington, D.C.  
September 6, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

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<sup>23</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991) (report from social worker with degree in psychology has no probative value as medical evidence in emotional condition claim).