

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FREDDIE C. BATCHELOR and DEPARTMENT OF HOUSING & URBAN
DEVELOPMENT, OFFICE OF PUBLIC HOUSING, Chicago, IL

*Docket No. 99-1387; Submitted on the Record;
Issued March 22, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an emotional condition or consequential physical injury causally related to compensable work factors.

On June 7, 1996 appellant, then a 36-year-old public housing specialist, filed a claim alleging that she sustained emotional stress and resulting aggravation of her respiratory condition from her federal employment. By decision dated December 19, 1996, the Office of Workers' Compensation Programs denied the claim, finding no compensable work factors had been substantiated. In a decision dated January 30, 1998, an Office hearing representative modified the prior decision to reflect that some compensable work factors had been established, but affirmed the denial of the claim. In decisions dated December 13 and July 9, 1998 the Office denied modification.

The Board has reviewed the record and finds that appellant has not established an emotional or physical condition causally related to compensable work factors.

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 disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.²

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

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

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.³

The record contains a comprehensive decision from an Office hearing representative dated January 30, 1998, which reviews the factual evidence in detail and makes appropriate findings with respect to the evidence. The Board will not restate the hearing representative's decision other than to summarize the relevant findings. The hearing representative correctly determined that appellant had established some compensable work factors. Appellant alleged that in a May 22, 1996 incident a supervisor had yelled and used inappropriate language and the record indicates that the supervisor was admonished for inappropriate behavior.⁴ The record also indicated that in January 1989 someone placed a comic strip on appellant's desk and in July 1993 appellant received on her desk a letter containing biblical parodies which she found offensive.⁵

The hearing representative properly determined that the remainder of the allegations had not been substantiated as compensable work factors. With respect to a June 4, 1996 incident, for example, the record does not contain reliable evidence of error or abuse. With respect to general allegations of harassment or discrimination, there are no findings of harassment or discrimination by a representative of the Equal Employment Opportunity Commission (EEOC), nor any other probative and reliable evidence that would establish a claim based on harassment or discrimination. As noted by the hearing representative, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁶ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁷

Appellant has not submitted any evidence after the January 30, 1998 decision of the hearing representative that establishes any additional compensable work factors. Since she has substantiated some compensable work factors, the medical evidence must be reviewed to

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

⁴ The Board has found that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment. See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁵ To the extent that appellant claims that these actions were part of a pattern of harassment, the record does not, as discussed below, support such a finding.

⁶ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁷ *Helen P. Allen*, 47 ECAB 141 (1995).

determine if causal relationship between a diagnosed condition and the compensable factors has been established. To establish her claim, appellant must submit rationalized medical evidence establishing that she has an emotional condition causally related to the compensable work factors.⁸ In this case, the record does not contain probative medical evidence sufficient to meet her burden of proof. In a report dated August 6, 1998, Dr. Michael Colombatto, a clinical psychologist, diagnosed adjustment disorder with depressed mood. He stated that appellant described her job as stressful, without specifically identifying the compensable work factors or providing a reasoned opinion on causal relationship between the diagnosed condition and the compensable factors. In a report dated September 26, 1997, an attending internist, Dr. Daniel Senseng, stated that appellant had asthma prior to a June 4, 1996 incident and the stress that she appeared to have been exposed to can aggravate an asthmatic condition. As noted above, a June 4, 1996 incident has not been accepted as a compensable work factor and therefore Dr. Senseng's report is of diminished probative value to the issue presented.

In the absence of a reasoned medical opinion based on a complete and accurate background, the Board finds that appellant has not met her burden of proof in this case.

The decisions of the Office of Workers' Compensation Programs dated December 3 and July 9, 1998 are affirmed.

Dated, Washington, DC
March 22, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ *William P. George*, 43 ECAB 1159 (1992).