

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY L. SQUARE and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Oklahoma City, OK

*Docket No. 01-1742; Submitted on the Record;
Issued July 18, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition on March 9, 1995 causally related to factors of her employment.

On June 13, 1996 appellant, then a 59-year-old monitor technician,¹ filed an occupational disease claim, alleging that she sustained an injury on March 9, 1995.² She alleged that on March 9, 1995 she experienced headaches, chest pains, anxiety and depression while she was watching security monitors and saw Gina Hoogendorn, a respiratory therapist and former coworker, on one of the monitors. Appellant stated that "it was the same as seeing Petrone."³ In an accompanying statement, appellant stated that her job as a monitor technician caused her to have headaches, depression and a sedative effect. She indicated her belief that Ms. Hoogendorn was one of Mr. Petrone's "cronies" and seeing her reminded appellant of the difficulties with Mr. Petrone.

By decision dated September 25, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she failed to establish that she sustained an emotional condition on March 9, 1995 causally related to compensable factors of her employment.

By letter dated October 8, 1996, appellant requested an oral hearing that was held on October 20, 1997. When asked at the hearing why she did not mention in her March 9, 1995

¹ Appellant had originally been employed as a respiratory therapist. She was assigned to the monitor technician job due to a previous work-related emotional condition sustained in March 1992.

² On March 9, 1995 appellant filed a recurrence of disability claim. In her recurrence claim form she did not mention the incident regarding Ms. Hoogendorn. She stated only that she returned to duty against medical advice and had not recovered from her 1992 employment injury.

³ Appellant's 1992 emotional condition claim involved her reaction to problems with Mr. Robert Petrone, appellant's supervisor.

recurrence claim form that she was upset at seeing Ms. Hoogendorn on the monitor that day, appellant testified that she was very upset and “wanted to get out of there and go see my doctor.” She testified that she saw Ms. Hoogendorn on the monitor waiting for an elevator.

By decisions dated December 31, 1997, May 24, 1999, and June 7, 2001, the Office denied modification of the Office’s September 25, 1996 decision.

In a letter dated May 10, 2001, the employing establishment stated that appellant’s physician had recommended that she not work under Dr. Petrone and her monitor technician job adhered to this restriction.

In a report dated December 6, 1995, Dr. Joe D. Savage stated that on March 9, 1995 appellant was watching security monitors when she observed Ms. Hoogendorn waiting for an elevator and became upset because Ms. Hoogendorn “was one of Dr. Petrone’s favorites” and seeing Ms. Hoogendorn reminded appellant of the problems she had experienced with Dr. Petrone. She had also become anxious that she might see Dr. Petrone on the monitor and she left to seek medical attention.

In a report dated December 15, 1998, Dr. Savage stated that appellant had experienced migraine headaches since at least 1992 and these headaches were a component of her conditions of anxiety and depression. He stated that, against his recommendation, appellant was given a job as a monitor technician and developed severe headaches after starting this job which necessitated medical treatment. Dr. Savage stated that it was not surprising that she developed headaches because a monitor technician usually had to sit in a darkened room looking at rather bright monitors. He stated:

“[S]he did see ... Gina Hoogendorn, a respiratory therapist, who was a person who worked in close association with Dr. Petrone. Seeing this woman on the monitor brought back the memory of all the problems that she had gone through while working under Dr. Petrone.... This further aggravated her emotional state, and brought on more anxiety. This aggravated her tendency to have headaches, developing a severe one, which resulted in her having to leave to go home and then to see her physician.

* * *

“I believe that there is ample evidence in [appellant’s] medical file to support the existence of headaches, both stress related and migraine headaches brought on by stress, to accept the fact that these problems existed prior to 1995, when she was required to go to work as a monitor technician, against her protest and against my medical recommendation.

The Board finds that appellant has failed to establish that she sustained an emotional condition on March 9, 1995 causally related to factors of her employment.

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 or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁴ 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 or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁵

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 employment factors.⁶ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁷

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or 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 providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁸ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁹

In this case, appellant alleged that on March 9, 1995 she experienced headaches, chest pains, anxiety, and depression while she was watching security monitors and saw Gina Hoogendorn, a respiratory therapist and former coworker, on one of the monitors waiting for an elevator. She stated that "it was the same as seeing Petrone." Appellant indicated her belief that Ms. Hoogendorn was one of Mr. Petrone's "cronies" and seeing her was a reminder of the harassment from Mr. Petrone which was the subject of her previously accepted emotional condition claim.¹⁰

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Thomas D. McEuen*, 41 ECAB 387(1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ See *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁷ See *Effie O. Morris*, 44 ECAB 470, 473 (1993).

⁸ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389 (1992).

⁹ *Id.*

¹⁰ As noted above, in her claim filed on March 9, 1995 alleging a recurrence of disability due to her 1992 employment injury, appellant made no mention of seeing Ms. Hoogendorn that day and becoming upset. She later explained this omission as being due to the fact that she was very upset and "just wanted to get out of there and go see my doctor."

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹¹ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹² In the present case, appellant has not alleged or submitted any evidence that Ms. Hoogendorn harassed her on March 9, 1995.¹³ Thus, appellant has not established a compensable employment factor under the Act in this respect.

Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence¹⁴

The decision of the Office of Workers' Compensation Programs dated June 7, 2001 is affirmed.

Dated, Washington, DC
July 18, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ See *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹² See *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹³ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁴ See *Garry M. Carlo*, 47 ECAB 299, 305 (1996).