

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANICE I. MOORE and DEPARTMENT OF DEFENSE, DEFENSE
LOGISTICS AGENCY, DEFENSE CONTRACT MANAGEMENT COMMAND,
St. Augustine, FL

*Docket No. 01-2066; Submitted on the Record;
Issued September 11, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issue is whether appellant established that she sustained an emotional condition in the performance of duty as alleged.

On January 17, 2001 appellant, then a 53-year-old administrative contracting officer, filed an occupational disease claim alleging that she had a stress anxiety attack and sustained a situational anxiety disorder on November 29, 2000 resulting from a confrontation with coworker from November 27 through 29, 2000. Appellant did not work from November 30, 2000 to January 3, 2001. Appellant's work involved administering a group of contracts, conducting conferences, negotiating prices and executing supplemental agreements for spare parts, provisioned items and repairs.

Appellant alleged that on November 27, 2000 her coworker, Michelle Lynch, came into appellant's office and "verbally attacked" her with "distraught, loud, angry insults and derogatory remarks" because Ms. Lynch's supervisor had just told Ms. Lynch she had the responsibility to process 100 electronic modifications, which she had not done. At a subsequent meeting to discuss the problem, appellant stated that she thought her supervisor, Steve Swenson, would support her request for backup information, but he stated that he did not want to see any backup information and that Ms. Lynch "had a point." When appellant stood up to ask for union representation, her supervisor, Commander Nels Frostenson, told her to "Sit down or I [wi]ll file a grievance against you!" Mr. Swenson then told appellant that he did not want to see her paperwork and if she did not obey his order and "go home right now," he would write her up for insubordination. Appellant stated that she and Ms. Lynch were sent home on five hours of administrative leave. She also stated that on another occasion that she did not receive support from management for her actions and was unfairly accused of giving contract modifications back to the contract administrator eight times for corrections. She stated that management accepted erroneous statements about her. Appellant alleged that she sustained stress and anguish by management's lack of support for her.

Appellant stated that on November 27, 2000 Ms. Lynch continued with her same type of “loud verbal attack with derogatory remarks and insults” because appellant had asked Ms. Lynch for standard routine backup needed for appellant to review and verify a complex work report. She also stated that management had threatened her, stating that, if she did not obey orders, she would be written up for insubordination.

In a statement dated May 29, 2001, a coworker, Thelma Burnham, stated that on November 27, 2000 she heard Commander Frostenson shout at appellant that he would file a grievance against her if she did not sit down and she later heard Mr. Swenson “angrily threaten” appellant that he would write her up for insubordination if she did not obey his orders and go home.

In a statement dated June 12, 2001, Ms. Lynch stated that Mr. Swenson approached her for not adequately completing her assigned tasks and she then approached appellant and expressed her “dismay” about the incomplete assignment and the impact it would have on her. She stated that her “approach was argumentative” toward appellant and she was annoyed at the amount of time that had passed without the assignment being completed. Ms. Lynch stated that her outburst upset appellant and caused disruption on her team. She stated at the subsequent meeting, Mr. Swenson said to appellant that, if she did not sit down, he would file a grievance against her. Ms. Lynch stated that she subsequently filed an Equal Employment Opportunity (EEO) complaint against the employing establishment and appellant.

In a memorandum dated January 3, 2001, Mr. Swenson stated that, regarding the events from November 27 to 29, 2000, he was casually standing outside his office and spoke to appellant for 30 seconds, telling her to focus on the postmodifications as soon as possible. Mr. Swenson stated that, at the meeting held the next day, he tried to resolve the conflict between appellant and Ms. Lynch and promote teamwork but both women expressed unwillingness to work with the other, so he placed them on administrative leave for the afternoon in order to give them a chance to rethink the incident. Mr. Swenson stated that, at one point during the meeting, appellant rose to leave stating that she was seeking union representation. He told her that the meeting was not punitive and if she left unexcused, it bordered on insubordination and appellant chose to continue with the meeting. Mr. Swenson stated that the meeting concluded at 11:45 a.m., but appellant did not leave immediately as instructed but stayed until 2:15 p.m. and he told her that he wanted her to leave and would not tell her again. In a statement dated May 8, 2001, he noted that appellant who was an employee with over 20 years of federal service had little or no sick leave in escrow and she was compelled to take leave-without-pay when he placed her on administrative leave.

In a statement dated December 20, 2000, Commander Frostenson stated that, at the meeting on November 28, 2000 appellant, stood up and pointed a finger at him, stating that she was going to seek union representation. He stated that he “calmly” asked her not to point a finger at him and that she continued to leave and speak, until Mr. Swenson spoke to her. Commander Frostenson stated that he did “not recall” threatening her.

In a memorandum dated May 8, 2001, Mr. Swenson stated that the EEO complaint appellant filed against him regarding the November 27, 2000 confrontation, contained many inaccuracies. He stated that what happened on November 27, 2000 was that appellant had a

conflict with a coworker in the workplace and both parties were sent home on administrative leave. Mr. Swenson stated that appellant had previously grieved the issue with management in the presence of union representatives, with an implied agreement to cease from further action.

By decision dated July 26, 2001, the Office of Workers' Compensation Programs denied appellant's claim, stating that the evidence of record did not establish that she sustained an emotional condition causally related to her federal employment. The Office found that Ms. Lynch's having a confrontation with appellant and Commander Frostenson's telling appellant to sit down or he would file a grievance against her constituted compensable factors of employment. The Office found, however, that the medical evidence did not support that appellant had a work-related emotional condition.

The Board finds that appellant did not establish any compensable factors of employment and, therefore, failed to establish that she sustained an emotional condition in the performance of duty as alleged.

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 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.¹ 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.²

Where an employee alleges harassment and cites to specific incidents and the employer denies that harassment occurred, the Office or some other appropriate fact finder must make a determination as to the truth of the allegations.³ The issue is whether the claimant under the Act has submitted evidence sufficient to establish an injury arising in the performance of duty.⁴ To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.⁵

To the extent that disputes and incidents alleged as constituting harassment by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.⁶ However, for harassment to

¹ 5 U.S.C. §§ 8101-8193.

² *Clara T. Norga*, 46 ECAB 473, 480 (1995); see *Thomas D McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

³ *Michael Ewanichak*, 48 ECAB 364, 366 (1997); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

⁴ See *Martha L. Cook*, 47 ECAB 226, 231 (1995).

⁵ *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

⁶ *Clara T. Norga*, *supra* note 2 at 481; *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.⁷

In this case, appellant has not established any compensable factors of employment. In response to the confrontation she had with Ms. Lynch on November 27, 2002 management held a meeting the next day to try to resolve the dispute between the two women. That was a reasonable response by Mr. Swenson to the problem and was within his discretion as a supervisor. When appellant rose to leave before the meeting was over, it was also within Mr. Swenson's discretion as appellant's supervisor to tell her to stay in order to finish conducting the meeting. The Board has held that mere disagreement or dislike of a supervisory or management action will not be compensable without a showing through supporting evidence that the incidents or actions complained of were unreasonable.⁸ Further, disciplinary actions concerning an oral reprimand, discussions or letters of warning for conduct pertain to actions taken in an administrative capacity and are not compensable unless the employee shows management acted unreasonably.⁹ Appellant has not made this showing. Commander Frostenson stated that he did not recall threatening appellant during the meeting by telling her he would file a grievance against her if she did not sit down but even if he did, that was not an unreasonable exercise of authority to enforce discipline at the meeting.¹⁰ There is no evidence that, when Mr. Swenson placed appellant and Ms. Lynch on administrative leave, he acted unreasonably.¹¹

Appellant did not submit sufficient evidence to support her other contentions that management accepted erroneous statements about her, unfairly criticized her for requesting that the contract administrator make excessive modifications and overall failed to support her in her work and, therefore, these are not compensable factors of employment. Appellant, therefore, has not established any compensable factors of employment and failed to establish her claim.¹²

⁷ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁸ *Constance I. Galbreath*, 49 ECAB 401, 409 (1998)

⁹ *Gregory N. Waite*, 46 ECAB 662, 673 (1995).

¹⁰ *Id.*

¹¹ *See John Polito*, 50 ECAB 347, 349 (1999); *Leroy Thomas*, 46 ECAB 946, 952 (1995).

¹² Since appellant did not establish any compensable factors of employment, the medical evidence need not be addressed. *See Diane C. Bernard*, 45 ECAB 223, 228 (1993).

The July 26, 2001 decision of the Office of Workers' Compensation Programs is modified in that appellant failed to establish any compensable factors of employment but is otherwise affirmed.

Dated, Washington, DC
September 11, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member