United States Department of Labor
Employees' Compensation Appeals Board

DEBORAH J. BLANCHARD, Appellant	)	
and	)	**Docket No. 03-1888**
	)	**Issued: December 9, 2003**
SOCIAL SECURITY ADMINISTRATION, Boston, MA, Employer	)	

Appearances:
Susan B. Conrad, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On July 11, 2003 appellant, through her authorized representative, filed a timely appeal from the Office of Workers' Compensation Programs merit decision dated April 15, 2003 which denied modification of appellant's emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has *de novo* jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On August 4, 2000 appellant, then a 44-year-old claims representative, filed a claim for compensation alleging that she developed an anxiety reaction resulting in chest pain and shortness of breath on July 24, 2000 due to factors of her federal employment.[1] She was taken

[1] The record reflects that, as a result of a 1999 EEO settlement concerning appellant's preexisting nonwork-related chronic medical conditions, appellant did not do face-to-face interviewing as other claims representatives, but dealt with her caseload by telephone contact and written correspondence with customers. She had also worked as a union steward for a period of time.

by ambulance to the hospital. Appellant lost time from work from July 24 through September 17, 2000. She applied for and was granted a hardship transfer. On September 18, 2000 appellant returned to work in a different location.

Appellant alleged that, on the morning of July 24, 2000, she became stressed shortly after arriving at work. She twice requested an explanation from her manager, Herbert Salls, as to why she did not receive an employee recognition award and discovered that morning that he still had not responded to her request for a meeting. Appellant stated that she was going to meet with an Equal Employment Opportunity (EEO) counselor that morning to discuss filing a complaint for harassment and reprisal against Mr. Salls. Appellant stated that, while sitting at her desk, Mr. Salls dropped off a work assignment which she had previously given him for proper distribution. She related that Mr. Salls' note indicated an instruction which was "not routine to regular office procedures" and, when she began to read his note, she "began to have chest pains which caused difficulty in breathing." As this assignment had been brought to her for the second time, she felt harassed. In an undated witness statement, Jay Hayes, a coworker, related that approximately a week prior to July 24, 2000 during the week of July 16, 2000, Mr. Hayes had dropped off a document on appellant's desk concerning a telephone interview appellant had several months prior. Mr. Hayes related that appellant had shared the content of the note with him and it was his guess that the manager had thought appellant had done something wrong and was bringing it to her attention.

In a letter dated September 5, 2000, appellant advised that grievances for not being granted a performance award and reprisal and a Privacy Act violation were pending and that she was filing an EEO complaint for harassment and retaliation. She requested a hardship reassignment to another office in January 2000, which was granted, and noted that she would be working in the Haverhill, Massachusets Office. Appellant alleged that, since February 1999, she was assigned an inequitable workload. She alleged that she was working a 32-hour tour of duty and assigned a workload greater than a 40-hour employee. Copies of appellant's current and past grievances, EEO complaints, along with resolutions were submitted.

In an August 28, 2000 medical report, Dr. Geoffrey A. Lundy, a Board-certified internist, stated that appellant was seen on July 27, 2000 for an episode of chest pain and inability to breathe in the workplace on July 24, 2000. Dr. Lundy stated that appellant "admits to a long history of depression and anxiety as a result of encounters with a specific employee in the workplace." He noted that this has been going on, since approximately May 1999. Dr. Lundy opined that appellant experienced severe depression with anxiety, somewhat responsive to pharmacological therapy. He recommended that appellant be placed in another office. Treatment notes dated July 27 and August 22, 2000 were included.

In an August 30, 2000 medical report, Dr. David J. Schopick, a Board-certified psychiatrist, diagnosed adjustment reaction with mixed emotional features. In the initial evaluation, Dr. Schopick noted that appellant had to go through the EEO process to obtain a work accommodation which would enable her to do telephone work as opposed to face-to-face interviewing and to have the denial of a service award overturned. Appellant stated that the conflict and tension had become very high with regard to her boss since April 1999.

By decision dated November 16, 2000, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable factors of employment.

Appellant requested a hearing, which was held on October 31, 2001. Appellant alleged that her supervisor illegally retaliated and harassed her which resulted in an anxiety attack on July 24, 2000. Appellant contended that the April 1998 arbitration decision concerning advanced sick leave, was resolved in appellant's favor and established that stress resulted from decisions by Mr. Salls. Appellant stated that Mr. Salls retaliated against her when she pursued her rights to be accommodated and when she served as a union steward. She alleged that Mr. Salls was openly hostile to her and to others, such as Karen Beaulieu and Mr. Hayes, who served as union officials. Appellant stated that, when management approved her hardship request, this constituted an admission that management concurred that the severe circumstances she endured jeopardized her health and welfare. Appellant testified that she filed an EEO complaint in 1997 concerning face-to-face interviewing because of her preexisting medical condition, which was resolved in her favor in 1999. Appellant's job description was changed from face-to-face interviewing to telephone interviews, but her workload remained the same. She testified that her work assignments were an issue she was considering for reopening her EEO complaint of on July 24, 2000.

Ms. Beaulieu, a coworker, testified at the hearing about her dealings with Mr. Salls. She stated that Mr. Salls had made remarks about appellant and had said that"[appellant] [is] like poison in the office." She testified that other supervisors would sit at her desk and show her appellant's records to establish that appellant did not do as much work as other employees. Additional evidence was submitted.[2]

In an October 24, 2001 letter, Dr. Lundy noted that appellant's anxiety and depression resulted from the actions of one of her coworkers which necessitated work less than full time and take significant amount of time off. He further stated that anxiety and depression have not been issues since appellant's relocation to another office.

In an October 29, 2001 letter, Dr. Schopick advised that appellant had been discharged upon her mutual agreement that her symptoms had completely resolved.

By decision dated February 21, 2002, an Office hearing representative affirmed the November 15, 2000 decision. The hearing representative found that, although Mr. Salls made inappropriate remarks about appellant to Ms. Beaulieu including "she is poison in the office," this was not a compensable factor as the comment was not directed at appellant. He found that appellant had not substantiated harassment or retaliation as a result of her winning the EEO complaint. The hearing representative found that, for a period of time after implementation of the EEO resolution, appellant was assigned more appointments than others in the office, which constituted a compensable factor. However, as the medical evidence of record failed to establish

[2] This included a November 26, 2001 chronological documentation of the claim, affidavits from appellant; James Blanchard, appellant's husband; Diane Hooper, and an October 31, 2001 letter from Richard G. Lemire. A chronology of events occurring between March 1997 and December 5, 2000 and copies of appellant's grievances, arbitration and EEO activity from March 17, 1997 through June 5, 2000.

that appellant's diagnosed condition was caused by this compensable employment factor, the hearing representative affirmed the denial of appellant's emotional condition claim.

By letter dated February 20, 2003, appellant requested reconsideration and advanced arguments.[3]

In a February 3, 2003 report, Dr. Schopick stated that appellant's initial session with him was on August 1, 2001 during which she stated that she was under stress and suffering from anxiety due to conflicts with a supervisor. He related that this was a subjective statement obtained for clinical reasons only. Dr. Schopick diagnosed adjustment disorder with mixed emotional features. He stated that he was "reluctant to state with specificity that a particular third party individual caused or contributed to specific problems leading to a compensable workers' compensation claim. However, if the reviewing Board accepts everything that [appellant] has reported to them and to me as factually correct, then my opinion is that it logically follows that the supervisor was the direct cause of her psychiatric illness and resulting disability."

By decision dated April 15, 2003, the Office denied modification of the February 21, 2002 decision.

LEGAL PRECEDENT

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 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 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 he claims compensation was caused or adversely affected by employment factors.[6] This burden includes the submission of a detailed

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[3] A December 12, 2000 email from appellant to Lawrence Dubois was submitted. This evidence, however, fails to offer evidence which supports an event in the performance of duty which is responsible for appellant's medical condition.

[4] 5 U.S.C. §§ 8101-8193.

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

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

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]

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that the diagnosed condition was caused by the one compensable employment factor found to have existed concerning appellant's workload. The Office further found that the other employment incidents and conditions alleged by appellant did not constitute compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant has alleged three work events which she felt directly contributed to her panic attack on July 24, 2000. These relate to not receiving a timely response from Mr. Salls regarding a requested meeting as to why she had not received a performance award; the preparation for and filing of an EEO complaint against Mr. Salls for harassment and retaliation, including an inequitable workload; and Mr. Salls placing an assignment on her desk which appellant felt was not routine to regular office procedures. Appellant further alleged that Mr. Salls had harassed and retaliated against her as a result of her winning the EEO complaint. She further alleged that, although her job description had changed as a result of the EEO settlement, management had failed to adjust her workload to reflect an equitable distribution and stated that management further failed to reduce her workload when her tour of duty was reduced to 32 hours.

The Board finds that appellant's reaction to not receiving a timely response from her manager regarding a requested meeting about why she had not received a performance award relates to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act absent a showing of error or abuse on the part of the employing establishment.[10] Appellant has not submitted evidence that

[7] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[8] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[9] *Id.*

[10] *See Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

her supervisor acted abusively or inappropriately in not responding to her request for a meeting. Appellant's desire for a timely response to discuss an issue pertaining to performance awards does not involve appellant's ability to perform her regular or specially assigned work duties, but rather constitute appellant's desire to work in a particular environment. The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.[11] Appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Regarding appellant's allegations that, on July 24, 2000, she was going to meet with an EEO representative in preparation for and filing of an EEO complaint against Mr. Salls, the Board notes that the development of any condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.[12]

Appellant alleged harassment and retaliation on the part of her supervisor and management in matters pertaining to her union activities and her 1999 EEO settlement pertaining to her job requirement of no longer conducting face-to-face interviews with clients. The record reflects that appellant had served in the capacity as a union steward and that she had filed numerous grievances on the actions that management had taken against her. The Board notes, however, that appellant has merely made an allegation concerning this matter without providing specific details or sufficient evidence to establish error or abuse on the part of the employing establishment. Mere perceptions of harassment or discrimination are not compensable under the Act.[13] Although appellant had filed numerous grievances over the years and stated that she was harassed when she worked as a union steward, the Board has adhered to the general principle that union activities are personal in nature and are not considered to be within an employee's course of employment or performance of duty.[14] In the present case, appellant provided insufficient evidence in support of her claim of harassment or retaliation. Appellant has not established a compensable employment factor under the Act.[15] Mr. Salls allegedly made comments concerning appellant. Appellant has not shown how such isolated comments would rise to the level of verbal abuse or otherwise fall within the coverage of the Act.[16] Moreover, the mere fact that appellant's request for a transfer to another location was approved, does not in and

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[11] *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

[12] *See Diana M. Ramirez*, 48 ECAB 308 (1997); *George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

[13] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[14] *Diana M. Ramirez*, 48 ECAB 308 (1997).

[15] *See William P. George*, 43 ECAB 1159, 1167 (1992).

[16] *See, e.g., Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction).

of itself, establish error or abuse.[17] Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and retaliation.

The Board further notes that the Office's hearing representative found that, as appellant was assigned more appointments than others in the office after the EEO settlement was implemented, she established a compensable factor of employment with respect to her workload. However, appellant's burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she had an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.[18]

None of the medical reports of record attribute appellant's emotional condition to her workload, the only compensable factor found in this case. In his August 28, 2000 and October 24, 2001 reports, Dr. Lundy, appellant's attending physician, stated that appellant has experienced severe depression with anxiety as a result of "encounters with a specific employee in the workplace" since approximately May 1999 which necessitated in her working less than full time, as well as taking a significant amount of time off. He also attributes appellant's episode of chest pain and inability to breathe on July 24, 2000 to the interaction of appellant and "this employee." Dr. Lundy failed to discuss how specific factors of appellant's employment caused or aggravated her condition or provide sufficient rationale for his opinion that appellant's encounters with the particular employee caused appellant's reaction on July 24, 2000 or caused her to experience depression with anxiety since May 1999.[19] Additionally, as Dr. Lundy is a Board-certified internist, his opinion on an emotional diagnosis is of diminished probative value.[20] In his August 30, 2000 report, Dr. Schopick, a Board-certified psychiatrist, diagnosed an adjustment disorder with mixed emotional features with severe work-related psychosocial stressor. Although he noted that conflict and tension had become very high between appellant and her boss since April 1999, he failed to identify any specific work factors which he believed caused appellant's condition. Dr. Schopick's statement in his February 3, 2003 report fails to attribute any event which occurred in the performance of duty to appellant's condition.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused or adversely affected by her employment. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.[21]

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[17] *See Michael Thomas Plante*, *supra* note 12.

[18] *See William P. George*, *supra* note 17.

[19] *Carolyn F. Allen*, 47 ECAB 240 (1995) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[20] *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987).

[21] *See William S. Wright*, 45 ECAB 498, 503 (1994).

CONCLUSION

Under the circumstances described above, the Board finds that appellant has not met her burden of proving that she sustained an emotional condition in the performance of duty.

ORDER

IT IS ORDERED THAT the April 15, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 2003
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member