

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SOUZAN A. EBRAHIM and DEPARTMENT OF THE ARMY,
U.S. ARMY TRAINING DOCTRINE, Monterey, CA

*Docket No. 03-208; Submitted on the Record;
Issued May 9, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition in the performance of duty.

On September 13, 2000 appellant, then a 52-year-old assistant professor, filed a claim for compensation¹ alleging that her suicide attempt of September 7, 2000 resulted after a long series of abuse and defamation. She alleged gender discrimination and that she was told that nobody wanted her in the department, it was too difficult to find her a permanent place in the entire school and there might be a place in the other school. On the reverse side of the claim form, Dr. Foazi El-Barouki, appellant's supervisor, denied witnessing any abuse and defamation alleged. He stated that he did not state to appellant that she was not wanted in the department or that it would be difficult to find a permanent place for her. The medical evidence submitted attributed appellant's suicide attempt to work stressors.

Appellant alleged that her emotional condition and suicide attempt to events beginning in 1995. She related that she was hired as a teacher of foreign language in a temporary position which was to last for 18 months. Appellant later discovered that some of her colleagues, who were also temporary, became permanent. She alleged that they did not have her qualifications and, when she questioned the chairperson and academic coordinator, she was told that she had no right to ask. Appellant stated that those who were promoted had qualifications in nonrelated areas or were not qualified for permanent placement. She attained permanent status through competition, while at least three of her colleagues were granted permanent status four years prior. Appellant alleged that "at least 85 percent of the instructors were ... incompetent, insecure or both."

¹ Appellant filed a claim for stress arising from anxiety/depression on March 5, 2000. It was assigned claim number 13-1215261 and dealt with events up through March 17, 2000. By decisions dated October 31, March 29 and May 9, 2002, the Office denied compensation, finding that appellant failed to establish any compensable factors of employment.

Appellant alleged that there was corruption in the hiring, training, testing and rewarding of employees at the employing establishment.

Appellant alleged that whenever there was a problem in any team, the employing establishment shuffled teachers within the department. She attributed her problems to a team leader, Mr. Hassouneh. Appellant stated that, prior to being shuffled, she had met with the chairperson and requested that he do the right thing and transfer the predator, not the victims. She stated that the chairperson had transferred the only two females on the team, Amal Gharib and herself. Appellant noted that she had requested to be transferred entirely from the department.

Appellant was transferred to a new department where Dr. El-Barouki was the chairperson and Onsey Shenouda was the team leader. She stated that the assigned homework focused more on the English language than the Target language and that other activities were neglected. Appellant noted that she met with Mr. Shenouda, who did not agree with her suggestions. After the meeting, appellant alleged that Mr. Shenouda told her that “[n]obody in the entire department wanted you, but I said yes.” Appellant stated that this was the type of opportunism which was present at the employing establishment.

Appellant related that a new round of shuffling was started to find her a spot and, during a meeting with the Dean, the Dean expressed how difficult it was to find her a spot. The Dean told appellant that she would be welcome back in Nagib Sedrak’s department. Appellant related that two recent hires were found permanent spots and both of them had been hired “on call” status. She stated that she had tried to reach the Dean on September 1, 2000 to find out her schedule and the team she would be working with, but was not able to meet with her. After several days of meeting with other individuals and not hearing about her schedule, appellant attempted an overdose while at work on September 7, 2000.

In a letter dated January 17, 2001, Christine Campbell, Dean, disputed appellant’s allegations. She described the circumstances surrounding appellant’s transfers and the employing establishment’s efforts to accommodate her transfer requests. Dean Campbell denied that anyone told appellant that no one wanted her in the department and it was too difficult to place her and Mr. Shenouda had informed Dean Campbell that he was delighted to work with appellant. Dean Campbell advised that she was informed that such remark was intended as a welcoming gesture of good will and, as such, was meant to be an endorsement of appellant. Dean Campbell stated that appellant was transferred on several occasions at her own request. The first reassignment was noted to be part of a department-wide reorganization which had been announced the prior Fall, but took place in March 2000. Dean Campbell stated that a sizable number of people, in addition to appellant, were reassigned; thus, appellant was not singled out for special treatment. Dean Campbell advised that the second, third and fourth reassignments were at appellant’s requests. While in Department C, appellant was reassigned by Dr. El-Barouki to do a departmental project. This reassignment was necessitated by the consolidation of team C-3 into 2 sections with 4 teachers vs. 3 sections with 6 teachers. Dr. El-Barouki reassigned appellant in an attempt to accommodate her desires, since she had requested that she be moved. He assigned her to the project pending the results of her transfer request, which included not being sent to Department D, where there was understaffing and she was needed, in

an effort so that appellant would not have to work with people she did not get along with, would have meaningful work to do and would not waste her time.

In a September 18, 2000 memorandum, Dr. El-Barouki described appellant's stay at Department C, where she worked from April 2000 to September 2000 and noted the circumstances surrounding her transfers and the employing establishment's effort to accommodate such transfers.

By decision dated September 6, 2001, the Office found that appellant's allegations pertaining to the promotions, qualifications of her coworkers and policies pertaining to hiring, training, testing and rewarding of employees at the employing establishment were not compensable factors. The Office found that appellant's reassignments were administrative matters which did not rise to the level of error or abuse; her reactions to not having her suggestions accepted did not arise in the performance of duty; and the "round of shuffling" described by appellant was related to her requests to be reassigned. Her allegations of gender discrimination were not supported by the evidence of record.

Appellant requested a hearing, which was held March 28, 2002. She submitted additional evidence, including medical evidence. In a memorandum dated March 7 and March 13, 2002, Dean Campbell addressed events related to appellant's transfer request made in August 2000. In a January 3, 2002 memorandum, she described meetings held in response to appellant's allegation about the comment allegedly made by Onsy Shenouda, which was described as being something to the effect of, "We welcome you to the team even though other teams did n[o]t want/accept you." Dean Campbell related that a meeting occurred on December 12, 2001 with appellant and Mr. Shenouda present, wherein he stated that he had said: "Whatever other teams have done, we welcome you." Dean Campbell related that Mr. Shenouda recognized his lack of sensitivity in making such a statement and apologized to appellant.

A copy of email messages dated March 6 and March 7, 2001 between Dean Campbell and another employing establishment official related to appellant's failure to attend an MEI POSH training session but had permission to attend a POSH training at another school.

Both appellant and the employing establishment provided comments on the hearing transcript. She also responded to the employing establishment's comments. Additional medical evidence was received.

By decision dated July 10, 2002, an Office hearing representative affirmed the September 6, 2001 decision, finding that appellant failed to establish her emotional condition was sustained in the performance of duty. The hearing representative found that the evidence of record failed to establish a compensable factor of employment.

The Board finds that appellant has not established that she sustained an emotional condition while in the performance of duty.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. Where the disability results from an employee's emotional reaction to employment matters but such matters are not related to the

employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Federal Employees' Compensation Act.² When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. 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.³ Generally, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act.⁴ However, error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter or evidence that the employing establishment acted unreasonably in the administration of a personnel matter may afford coverage.⁵ Likewise, a claim based on a difficult relationship with a supervisor must be supported by the record⁶ and a claimant's burden of proof is not discharged by the fact that the employee has identified some employment factors.

In the present case, the record reflects that around mid March 2000, appellant made an unsuccessful request to remain on her current team in Department D and have her team leader Mr. Hassouneh transferred. However, as part of a reorganizational plan, the Chair of the Department moved appellant, along with another employee, from one team to another as part of the reorganization. The Board has held that a reaction to a transfer or the disappointment over the failure to obtain a desired transfer, does not constitute a compensable employment factor absent a showing of error or abuse on behalf of the employing establishment.⁷ As appellant has submitted no evidence regarding error or abuse on behalf of the employing establishment regarding the reorganizational plan and her subsequent transfer, she has not established a compensable factor of employment.

Appellant has alleged that many actions taken by supervisors at the language school constituted gender discrimination against her and that her new team leader, Dr. El-Barouki, yelled at her. Where an employee alleges harassment or discrimination 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.⁸ The issue is not whether the claimant has established harassment or discrimination under standards applied the Equal Employment Opportunity Commission. Rather the issue is whether the claimant, under the Act, has submitted evidence sufficient to establish an injury arising in the performance of duty.⁹ To

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁴ *See Gregory N. Waite*, 46 ECAB 662 (1995).

⁵ *Norman A. Harris*, 42 ECAB 923 (1991).

⁶ *See Diane C. Bernard*, 45 ECAB 223 (1993).

⁷ *See Joan Juanita Greene*, 41 ECAB 760 (1990).

⁸ *Michael Ewanichak*, 48 ECAB 364, 366 (1997); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

⁹ *See Martha L. Cook*, 47 ECAB 47 ECAB 226, 231 (1995).

establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.¹⁰ Mere perceptions of harassment are not compensable under the Act.¹¹ The Office specifically found that appellant has not submitted probative and reliable evidence to establish that her transfer was discriminatory or that Mr. El-Barouki was verbally abusive towards her. The statements of personnel at the school submitted to the record do not substantiate appellant's allegations of gender bias or discrimination.

The evidence of record reflects that appellant was transferred to the team lead by Onsy Shenouda in Department C, effective April 2, 2000. The transfer was initiated at appellant's request. Although the exact wording of Mr. Shenouda's remark made to appellant regarding her joining the team remains in dispute, the employing establishment noted that the remark was meant as a welcoming gesture. Although the Board has recognized the compensability of verbal altercations or abuse in certain circumstances, this does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.¹² In this case, the Office hearing representative specifically found that appellant has not shown that Mr. Shenouda's comment rose to the level of verbal abuse or otherwise within the coverage of the Act. The employing establishment noted that the remark, although insensitive, was meant to be a welcoming comment. This incident is not a compensable factor of appellant's employment.

Appellant's concerns regarding how the language school was run, particularly with regard to its hiring and promotion practices and the fact that she felt Mr. Shenouda did not take her suggestions for changes seriously, do not give rise to a compensable disability under the Act as it relates to her frustration from not being permitted to work in a particular environment or to hold a particular position.¹³ Although appellant has implied she was not treated properly with regard to achieving her permanent status, the Board finds that appellant has not established that she was treated erroneously or abusively with respect to promotions, work assignments or other personnel and administrative matters.

The record further reflects that appellant requested a transfer out of Mr. Shenouda's team, but did not wish to be transferred to a team in Department D. Appellant had several meetings with management regarding her transfer request, but became dissatisfied with management's response to her request and frustrated over being unable to find out her schedule or the team with which she would be working. 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.¹⁴

¹⁰ *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

¹¹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹² *See Mary A. Sisneros*, 46 ECAB 155, 163-64 (1994); *David W. Shirey*, 42 ECC AB 783, 795-96 (1991).

¹³ *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

¹⁴ *Id.*

Appellant has not established that she sustained an emotional condition in the performance of duty, as she failed to establish any compensable factor of employment. Since appellant has failed to establish a compensable factor of employment, she has failed to establish her claim and the medical evidence need not be addressed.¹⁵

The July 10, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 9, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹⁵ See *Diane C. Bernard*, *supra* note 6.