

**United States Department of Labor
Employees' Compensation Appeals Board**

A.B., Appellant

and

**DEPARTMENT OF LABOR, OFFICE OF
WORKERS' COMPENSATION PROGRAMS,
New York, NY, Employer**

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**Docket No. 06-2107
Issued: January 26, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 18, 2006 appellant filed a timely appeal of a June 15, 2006 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established an emotional condition causally related to compensable work factors.

FACTUAL HISTORY

On October 31, 2003 appellant filed an occupational claim (Form CA-2) alleging that she sustained depression and anxiety as a result of her federal employment. She submitted a narrative statement dated October 29, 2003 alleging that she was at work on September 11, 2001 when she saw smoke and then a plane crash into the World Trade Center. Appellant stated that she heard screaming on her way home and heard sirens all night long. She experienced anxiety attacks with dizziness on several occasions. Appellant stated that she informed Zev Spair, her

new supervisor, that she was on medication and of a problem with a coworker who continued to make disturbing loud noises in the next cubicle. She stated that it took four months to resolve the problem. When appellant returned from a vacation in September 2003, her supervisor told her that she would have to do another employee's work while that employee was on vacation. She questioned her supervisor regarding the additional work.

With respect to the medical evidence, appellant submitted notes from Dr. Hamid Mussavian, a psychiatrist, for treatment in October 2003. In an October 29, 2003 note, Dr. Mussavian stated that appellant experienced anxiety, panic attacks and depression since September 11, 2001, when she observed the attacks. He reported that appellant needed to have a less stressful job assignment. In a report dated October 29, 2003, Dr. Thomas Tsang, an internist, reported that appellant had vertigo, anxiety and chronic low back pain.

The Office prepared a statement of accepted facts and referred appellant to Dr. Glenn Kalash, a psychiatrist. The statement of accepted facts indicated that the Office accepted as compensable work factors: (1) observing a plane crash into the World Trade Center on September 11, 2001; and (2) being subject to disturbing noises from a coworker. The Office did not accept any other work factors as compensable.

In a report dated March 26, 2004, Dr. Kalash provided a history and diagnosed panic disorder and depression by history. He stated that appellant described her supervisor as constantly requesting assistance and that this made it difficult to manage her daily duties. Dr. Kalash reported that appellant spent the majority of time detailing her workplace problems in relation to her supervisor, not to the events of September 11, 2001 or a noisy coworker. He opined that it was her supervisor and increased work responsibilities that caused emotional distress. Dr. Kalash also stated, "I cannot discount that the witness and experience of the September 11, 2001 event did not uncover or actually induce an anxiety disorder in [appellant]." In a report dated April 20, 2004, he stated that the increase in work responsibilities may have been appellant's perception rather than an established fact.

By decision dated May 7, 2004, the Office denied appellant's claim for compensation. It found that Dr. Kalash did not establish an emotional condition causally related to a compensable work factor.

Appellant requested a hearing before an Office hearing representative. By decision dated November 23, 2004, the Office hearing representative remanded the case for further development. The hearing representative indicated that Dr. Kalash did not provide a rationalized medical report based on a complete background for the issue presented. The hearing representative noted that Dr. Kalash was not provided with the medical evidence of record, and the statement of accepted facts should reflect that it was not accepted as factual that the claimant was given increased work duties in September 2003. The case was remanded for referral to an appropriate specialist for an opinion concerning the diagnosis of appellant's condition and its relationship to compensable work factors.

On January 14, 2005 the Office received a November 5, 2002 form report diagnosing major depression.¹ The report stated that appellant had been suffering from depression since August 2002, when she started experiencing vertigo.

The Office referred appellant, together with a statement of accepted facts and medical records to Dr. Arthur Perlman, a psychiatrist. In a report dated March 10, 2005, Dr. Perlman provided a history and diagnosed dysthymic disorder. Under Axis IV, psychological stress factors affecting the patient, Dr. Perlman reported stress related to her job as well as her experience on September 11, 2001.² He indicated that appellant reported that her supervisor gave her a lot of work to do and two of her coworkers would say and do things that irritated her. Dr. Perlman noted that, although appellant gave much weight to her experience as a witness to some of the September 11, 2001 devastation, she apparently was not in any personal danger or direct threat. Dr. Perlman further stated: "My opinion is that the claimant is suffering from a depressive disorder. I believe that this disorder developed spontaneously as a biological event and was not related to her experiences either at work or to the World Trade Center attack. Consequently, I do not believe that her condition was caused by the factors of her employment or incidents which occurred in the performance of her duty." Dr. Perlman reported that appellant found ordinary work stresses such as scheduling and dealing with the public more stressful than in the past, most likely a result of increased baseline anxiety and depression. He concluded that appellant could work her normal job.

By decision dated March 23, 2005, the Office denied appellant's claim for compensation. She requested a review of the written record, and by decision dated June 15, 2006, the hearing representative affirmed the March 23, 2005 decision. The hearing representative found that the weight of the evidence was represented by Dr. Perlman.

LEGAL PRECEDENT

To establish a claim that she sustained an emotional condition in the performance of duty, appellant must submit factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition. Appellant must also submit medical evidence establishing that she has an emotional or psychiatric disorder and rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.³

The Board has held that 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 employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to her regular or

¹ The physician's signature is illegible.

² Axis IV is for reporting psychosocial and environmental problems that may affect the diagnosis, treatment and prognosis of mental disorders. See American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (fourth edition).

³ *Leslie C. Moore*, 52 ECAB 132 (2000).

specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of her work or her fear and anxiety regarding her ability to carry out her work duties.⁴

By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.⁵

The Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors, which may be considered by a physician when providing an opinion on causal relationship, and which are not deemed factors of employment and may not be considered.⁶ As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.⁷

ANALYSIS

The Office accepted as compensable work factors that appellant observed a plane crashing into the World Trade Center on September 11, 2001 while at work⁸ and that she was subject to disturbing noises from a coworker in 2003. The record does not establish any additional compensable work factors. Appellant briefly discussed being assigned to additional work duties in 2003 while a coworker was on vacation, without providing further detail. She appeared to indicate to Dr. Perlman that she was given additional work by her supervisor. The record does not contain a statement from appellant discussing in detail the nature or extent of any additional work responsibilities. Overwork may be a compensable work factor if it is substantiated by the record,⁹ but appellant has not established overwork based on the evidence of record. She did not submit any probative evidence establishing a compensable work factor in this regard.

With respect to any allegations regarding conflicts with her supervisor, appellant did not describe specific incidents involving actions by her supervisor. It is well established that

⁴ *Ronald J. Jablanski*, 56 ECAB ____ (Docket No. 05-482, issued July 13, 2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁵ *Id.*

⁶ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁷ *See Charles E. McAndrews*, 55 ECAB 711 (2004).

⁸ *See Sedi L. Graham*, 57 ECAB ____ (Docket No. 06-135, issued March 15, 2006) (compensable work factor from witnessing September 11, 2001 attack on the Pentagon).

⁹ *Bobbie D. Daly*, 53 ECAB 691 (2002).

administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.¹⁰ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.¹¹ Appellant did not submit probative evidence of error or abuse in an administrative action.

Since compensable work factors were established, the remaining issue is whether the medical evidence of record is sufficient to establish a diagnosed condition causally related to a compensable work factor. The Office initially referred appellant to Dr. Kalash, who did not provide a reasoned medical opinion based on a complete background on the issue presented. As directed by an Office hearing representative, the Office then referred appellant to Dr. Perlman. In a March 10, 2005 report, Dr. Perlman diagnosed dysthymic disorder. He did not, however, find that the condition was causally related to the compensable employment factors. Dr. Perlman clearly stated that he felt that the diagnosed condition developed spontaneously as a biological event and was not related to the accepted work factors.

The record does not contain any probative medical evidence with a reasoned opinion on causal relationship between a diagnosed condition and the compensable work factors. Dr. Mussavian stated in an October 29, 2003 report that appellant had been suffering from anxiety, panic attacks and depression since September 11, 2001, without providing a complete history or other additional explanation. The November 5, 2002 report appeared to indicate that appellant had developed depression in August 2002 following the occurrence of vertigo symptoms.

The Board finds that the weight of the medical evidence is represented by Dr. Perlman who provided a reasoned opinion based on a complete background that the diagnosed condition was not causally related to compensable work factors. The record therefore does not establish a diagnosed emotional condition causally related to a compensable work factor.

CONCLUSION

Appellant did not meet her burden of proof to establish an emotional condition causally related to a compensable work factor.

¹⁰ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

¹¹ *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 15, 2006 is affirmed.

Issued: January 26, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board