

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

D.K., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
PITTSBURGH HEALTHCARE SYSTEM,
Pittsburgh, PA, Employer**

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**Docket No. 08-157
Issued: April 24, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 23, 2007 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated August 21, 2007, which denied her claim. 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 met her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

FACTUAL HISTORY

On February 12, 2007 appellant, then a 54-year-old program support assistant, filed a Form CA-2, occupational disease claim, alleging that her overwhelming workload with deadlines caused stress. She stopped work on January 25, 2007 and returned to work on February 12, 2007. By letters dated March 7, 2007, the Office informed appellant of the

evidence needed to support her claim and asked the employing establishment to respond. In a March 6, 2007 statement, appellant contended that her problems began in 2000 when her workload increased because Medicare guidelines changed. She became overwhelmed physically and mentally and had to seek medical attention. Appellant submitted e-mails noting claims that were 30 days late and daily work assignments.

In an attending physician's report dated February 26, 2007, Dr. Kevin Kraemer, a Board-certified internist, diagnosed anxiety disorder and panic disorder and checked a "yes" box, indicating that the diagnosed conditions were employment related, indicating that appellant's condition was aggravated by stress at work. He advised that she was totally disabled from January 25 to February 8, 2007 and could return to work on February 9, 2007. By report dated June 1, 2007, Dr. Kraemer advised that appellant had symptoms of progressive, worsening generalized anxiety and increasing frequency of panic episodes manifest by claustrophobia, hypervigilance, fear, diaphoresis and heat intolerance. He reiterated his diagnoses and noted that he placed her on medication and referred her to a stress management class. Dr. Kraemer opined that work stress, her work volume and a negative work environment "contributed to and profoundly exacerbated her anxiety and panic attacks."

Christine M. Fuoss, manager of patient accounts, described appellant's job duties. She stated that work was done by three employees and that appellant was scheduled to work eight hours per day, five days per week. Ms. Fuoss noted that the volume of work fluctuated on a daily basis, that timeframes for completion of work were required and that staff received support from students and contractors. She noted that appellant had not filed a grievance or requested a change in assignment or transfer and advised that overtime was voluntary and was not mandatory. Ms. Fuoss noted that new software was added in 2006 and that, although appellant initially experienced difficulty in achieving an expected volume, after several training sessions, she acquired the needed skills. The record also contains a leave use summary and an overtime report showing that appellant worked approved overtime for the period March 29 through June 22, 2005, totaling 4.5 hours and from March 15 through September 28, 2006, for a total of 95.5 hours.

By decision dated August 21, 2007, the Office denied the claim on the grounds that appellant did not establish a compensable factor of employment.

LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.¹

¹ *Leslie C. Moore*, 52 ECAB 132 (2000).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,² the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.³ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁴ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁵ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.⁶ Overwork, as substantiated by sufficient factual information to corroborate the claimant's account of events, may be a compensable factor of employment.⁷

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and Equal Employment Opportunity Commission (EEOC) complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred. Where an employee alleges harassment and cites specific incidents, the Office or other appropriate fact finder must determine the truth of the allegations. The issue is not whether the claimant has established harassment or discrimination under EEOC standards. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁸

ANALYSIS

The Board finds that appellant has established compensable factors of employment with regard to overwork and that she had difficulty learning new software. The record contains overtime logs indicating that from March 29, 2005 to September 28, 2006 she worked a total of

² 28 ECAB 125 (1976).

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Robert W. Johns*, 51 ECAB 137 (1999).

⁵ *Lillian Cutler*, *supra* note 2.

⁶ *Roger Williams*, 52 ECAB 468 (2001).

⁷ *Bobbie D. Daley*, 53 ECAB 691 (2002).

⁸ *James E. Norris*, 52 ECAB 93 (2000).

100 hours of overtime. Ms. Fuoss acknowledged that appellant initially had difficulty attaining the ability to work an expected volume of claims after new software was added in 2006. Where disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as arising out of and in the course of employment and falls within the Act's coverage.⁹ As appellant had difficulty in performing her assigned duties, she has established a compensable factor of employment under *Cutler*.¹⁰

Appellant also generally alleged that she worked in a hostile work environment but provided no specific information regarding this claim. The issue of whether a claimant has established harassment or discrimination under the Act, is whether the claimant has submitted sufficient evidence to establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.¹¹ Given the lack of specific details and evidence of record regarding this allegation, appellant has not established employment-related harassment under the Act.¹²

As appellant has established compensable factors of employment, on remand the Office must base its decision on an analysis of the medical evidence.¹³ After such further development as it deems necessary, the Office shall issue an appropriate decision.

CONCLUSION

The Board finds that, as appellant established compensable factors of employment regarding overwork and difficulty learning new software, this case is not in posture for decision regarding whether she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.¹⁴

⁹ *Lillian Cutler*, *supra* note 2.

¹⁰ *See Phillip L. Barnes*, 55 ECAB 426 (2004).

¹¹ *James E. Norris*, *supra* note 8.

¹² *Kathleen A. Donati*, 54 ECAB 759 (2003).

¹³ *Phillip L. Barnes*, *supra* note 10.

¹⁴ The Board notes that appellant submitted evidence with her appeal to the Board. The Board cannot consider this evidence, however, as its review of the record is limited to that which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); *see Kathleen A. Donati*, *supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 21, 2007 be vacated and the case remanded to the Office for proceedings consistent with this opinion of the Board.

Issued: April 24, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board