

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

A.B., Appellant

and

**DEPARTMENT OF DEFENSE, COMMISSARY,
Tobyhanna, PA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 08-2508
Issued: July 10, 2009**

Appearances:
Ronald J. Mishkin, Esq., for the appellant
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 September 19, 2008 appellant, through her attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated July 1, 2008. 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 developed an emotional condition due to factors of her federal employment.

FACTUAL HISTORY

On October 10, 2007 appellant, then a 42-year-old commissary support clerk, filed a occupational disease claim alleging that she developed excessive daytime sleepiness, inability to drive, sleep apnea, depression, stress, blurred vision, carpal tunnel, severe back pain, diabetes and high blood pressure due to her employment duties. Her job duties including performing back-up for bank runs, changing prices, running labels, produce pricing as well as placing orders in a timely manner, performing inventory, billing for utilities and processing the vendor credit

memos. Appellant noted that the employing establishment was undergoing renovation and that a coworker had retired increasing the pressure. She noted that formally four employees worked in her office and that she and a coworker currently performed all the duties. She stated, "The overwhelming pressure of these things to be done is extremely stressful..."

In a report dated August 30, 2007, Dr. Steven Gold, an internist, stated that appellant was depressed and suffering from significant stress at work and home rendering her totally disabled. Appellant also submitted a series of work release notes from Dr. Gold, dated August 3 through November 15, 2007 indicating that she was disabled due to depression. On October 11, 2007 Dr. Corazon A. Guerra, a psychiatrist diagnosed severe depression.

Jerry Durham, appellant's supervisor, completed a statement on October 23, 2007, stating that appellant had never reported stress at work or requested accommodation. He noted that she had stated that she felt that she was doing the work of four people. Mr. Durham asserted that the employing establishment employed five people in the commissary five years previously when additional work was performed in the store. He further stated that the renovations did not impact appellant's work.

In a letter dated November 13, 2007, the Office requested additional factual and medical evidence from appellant. On December 3, 2007 appellant responded and noted that her blood pressure was elevated due to on-the-job stress. She stated, "Doing the work and duties as assigned which has caused me to be in the state I'm in now, totally disabled."

Mr. Durham completed an additional statement on December 12, 2007. After January 2007, appellant's duties were increased to include helping with the bank run. However, her duties did not increase due to the renovation. Mr. Durham stated that the shortage of staff did not affect appellant and noted that she had received outstanding performance ratings for the last two years. Although she stated that she was doing the work of four or five people, the workload had been transferred to headquarters.

On December 3, 2007 Dr. Guerra diagnosed major depression, panic disorder and post-traumatic stress disorder with severe work stress. In a form report dated December 4, 2007, she diagnosed major depression and indicated with a checkmark "yes" that the condition was caused or aggravated by an employment activity.

By decision dated January 17, 2008, the Office accepted as a compensable factor that appellant had an additional duty of helping with the bank run. However, it denied her claim finding, that the medical evidence was not sufficient to establish a causal relationship between the accepted factor and her diagnosed condition.

Appellant's attorney requested reconsideration on March 11, 2008 and alleged that the acceptance of appellant's claim by the Office of Personnel Management should be considered by the Office. Appellant submitted a decision by the Merit System Protection Board denying her claim on the grounds that she had not established that the employing establishment retaliated against her because she engaged in protected activities. She contended that she received a lower performance evaluation after she filed a complaint alleging race and gender discrimination. Appellant alleged that the employing establishment discriminated against her when her

supervisor charged her with being absent without leave from December 18, 2001 through January 14, 2002. She alleged that her supervisor made a disclosure of an abuse of authority. On January 16, 2008 the Office of Personnel Management approved appellant's application for disability retirement due to a mental condition.

On October 7, 2002 appellant alleged that her supervisor had observed employees through the security cameras. She alleged that the cameras were installed to prevent customer theft and not for employee surveillance. Appellant found it unsettling to be observed by camera and indicated that this situation was stressful.

In a form report dated January 21, 2008, Dr. Guerra diagnosed depression and severe anxiety. Appellant attributed her condition to the workload given by her supervisor. Dr. Maribel Garcia-Jones, a clinical psychiatrist, noted that she experienced prejudice and harassment for the duration of her job. On November 27, 2007 appellant stated that discussion of work seemed to cause a panic reaction as she feared a breakdown at work. Dr. Garcia-Jones diagnosed extreme depression, anxiety and fear.

In a report dated November 30, 2007, Dr. Gold noted that appellant felt pressure at work due to the requirements of her job, the difficulties of her work circumstances and the pressure from her supervisor. He diagnosed anxious depression and stated that she was totally disabled. Dr. Gold opined that the cause of appellant's psychiatric breakdown was work-related stressors.

Appellant's attorney requested clarification from Dr. Gold on February 13, 2008 and mentioned her work duty of helping with bank runs and the decreased staff. In a March 6, 2008 note, Dr. Gold stated that appellant reported an escalation of her job duties prior to her emotional condition.

By decision dated July 1, 2008, the Office denied appellant's claim for an emotional condition. It found that she had not substantiated any additional employment factors and that the medical evidence was not sufficient to establish that the accepted factor caused or contributed to her diagnosed emotional condition.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related 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 worker's 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

¹ 5 U.S.C. §§ 8101-8193.

employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.²

Generally, actions of the employing establishment in administrative or personnel matters unrelated to the employee's regular or specially assigned work duties, do not fall with the coverage of the Act.³ While an administrative or personnel matter will be considered an employment factor where the evidence discloses error abuse on the part of the employing establishment, mere perceptions are insufficient. In determining whether the employing establishment erred or acted abusively, the Board determines whether the employing establishment acted reasonably.⁴

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.⁵ 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.⁶ Such opinion of the physician must be one of reasonable medical certainty and must be supported by medical reasoning explaining the nature of the relationship between the diagnosed condition and the employment.⁷

ANALYSIS

Appellant alleged that she developed an emotional condition as a result of her employment duties, due to harassment and discrimination, overwork and excessive supervisor pressure and observation. By decision dated July 1, 2008, the Office denied her emotional condition claim finding that she had established an employment factor, the increased work duty of making bank runs. However, the medical evidence did not establish that appellant's emotional condition was due to this factor. The Board must initially review whether the alleged employment activities are covered factors under the Act.

Appellant attributed her emotional condition to work-related stress. Specifically, she listed her employment duties and stated that the overwhelming pressure of those activities was

² See *Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

³ *James E. Norris*, 52 ECAB 93, 100 (2000).

⁴ *Bonnie Goodman*, 50 ECAB 139, 143-44 (1998).

⁵ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

⁷ *Leslie C. Moore*, 52 ECAB 132, 134 (2000).

stressful. Appellant further stated that doing her work and assigned duties caused her emotional condition. She has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.⁸ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁹ Appellant did not offer a detailed explanation of her listed employment duties she believed caused or contributed to her emotional condition. She made only general references to becoming overwhelmed by her work. Therefore, appellant has not substantiated that her employment duties singularly or in their entirety caused or contributed to her emotional condition.

Appellant alleged that she was overworked as she and a coworker were performing duties which formally required four employees. Her supervisor disagreed with this allegation and noted that much of the work performed by the additional employees had been transferred from the employing establishment to headquarters. Appellant has not submitted any witness statements or other evidence to establish that she was in fact overworked and has not substantiated a compensable factor of employment.

Appellant alleged that her supervisor improperly utilized the security camera to observe employees at work. The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of the Act. This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employee's will at times disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.¹⁰ Appellant's disagreement with the use of the security camera does not establish error or abuse on the part of her supervisor.

Appellant submitted a decision from the Merit System Protection Board finding that she was not subjected to discrimination and retaliation at the employing establishment. For discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of discrimination are not compensable under the Act.¹¹ Unsubstantiated allegations of discrimination are not determinative of whether such discrimination occurred.¹² A claimant must establish a factual basis for his or her allegations of discrimination with probative and reliable evidence.¹³ Appellant did not submit sufficient factual information in support of her allegations of discrimination and retaliation. Therefore, she has not substantiated a compensable factor of employment.

⁸ *Pamela R. Rice*, 38 ECAB 838, 841 (1947).

⁹ *Effie O. Morris*, 44 ECAB 470 473-74 (1993).

¹⁰ *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

¹¹ *Reco Roncoglione*, 52 ECAB 454, 456 (2001).

¹² *Penelope C. Owens*, 54 ECAB 684, 686 (2003).

¹³ *Beverly R. Jones*, 55 ECAB 411, 417 (2004).

The Office accepted that appellant was assigned the work duty of making bank runs. As appellant has substantiated a compensable work factor, the Board must review the medical evidence to determine if this factor caused or contributed to her diagnosed emotional conditions.

Dr. Gold, an internist, attributed appellant's depression to stress at work on August 30, 2007. A November 30, 2007 report provided a brief summary of treatment and attributed her emotional condition to her job requirements and supervisory pressure. Dr. Gold did not mention the accepted employment factor of making trips to the bank. Appellant's attorney requested clarification from Dr. Gold on February 13, 2008 and mentioned the accepted factor of making bank runs. In a March 6, 2008 note, Dr. Gold again failed to mention the accepted factor and briefly stated that appellant had an escalation of her job duties prior to the onset of her emotional condition. These reports are not sufficient to meet appellant's burden of proof as Dr. Gold provided a rationalized medical opinion addressing how the accepted employment factor would cause or aggravate her diagnosed depression.

Dr. Guerra, a psychiatrist, attributed appellant's major depression, panic disorder and post-traumatic stress disorder to work activities with a checkmark "yes" on December 4, 2007. She did not specifically mention the accepted employment factor as causing or contributing to appellant's condition. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether a claimant's condition is related to employment activity is of diminished probative value. Without any explanation or rationale for the conclusion reached, such a report is insufficient to establish causal relationship.¹⁴ In a form report dated January 21, 2008, Dr. Guerra again diagnosed depression and attributed the condition to appellant's workload. She again failed to identify the accepted employment factor and failed to provide any rationalized explanation of how this factor caused or contributed to appellant's diagnosed medical condition. Similarly, the reports of Dr. Garcia-Jones addressed appellant's treatment for depression and hospitalization in October 2007. However, she did not provide an explanation of how appellant's condition and need for treatment was caused or contributed to by the accepted factor.

CONCLUSION

The Board finds that appellant has not submitted sufficient medical opinion evidence to establish that her diagnosed emotional condition was caused or contributed to by the accepted employment factor of making bank runs.

¹⁴ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

ORDER

IT IS HEREBY ORDERED THAT the July 1, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 2009
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