

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHARON D. BONILLA and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Visalia, Calif.

*Docket No. 96-960; Submitted on the Record;
Issued April 1, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that her emotional condition occurred in the performance of duty.

On March 22, 1993 appellant, then a 36-year-old claims representative, filed a notice of occupational disease, claiming that she had a panic attack at work on February 8, 1993 that was caused by job pressure. In support of her claim, appellant submitted a March 15, 1993 report from Dr. Francisco E. Montalvo, a Board-certified psychiatrist, who diagnosed major depression and severe panic attack without agoraphobia. He stated that appellant could never work with the people who had caused her so much stress.

On June 14, 1993 the Office of Workers' Compensation Programs requested that appellant provide a description of work-related factors contributing to her emotional condition and a comprehensive medical report explaining how these factors caused her depression. Appellant responded with a personal statement generally alleging mistreatment by unreasonable management. She stated that feelings of hopelessness triggered pain in her neck, left arm and hand, that she suffered from crying spells and headaches and that she believed management was trying to remove her from her position.

Appellant specifically cited the refusal of management to place in her personnel file a suggestion award she received, a reduction in her workload after a desk audit of her position, denial of her request to participate in the leave-sharing program, the fact that she was forced to use a dysfunctional desk and was not allocated a new one, a different performance appraisal rating than expected and the filing of Equal Employment Opportunity (EEO) complaints in 1987 and 1992.

On September 10, 1993 the Office denied the claim on the grounds that the evidence failed to establish that appellant sustained an injury in the performance of duty. The Office noted that the discriminatory and harassing incidents alleged to have caused appellant's stress

were primarily administrative actions regarding personnel matters and there was no evidence of error or abuse on the part of management.

Appellant timely requested a hearing, which was held on June 15, 1994. Appellant testified that she had been a full-time union representative until July 1990 when she returned to work 80 percent of the time. Appellant described the problems with her defective desk,¹ management's harassment of her for contacting a claimant by telephone, management's use of her computer and the situation on February 8, 1993 when she went into the office to request sick leave.²

In a decision dated November 8, 1994, the hearing representative denied the claim on the grounds that the evidence was insufficient to establish that the work factors described by appellant produced a compensable medical condition. The hearing representative found that the following work factors were not factually established: that the employing establishment intentionally caused appellant's neck injury by refusing to repair or replace her desk; that the employing establishment failed to provide an ergonomic work station or to adhere to appellant's physical restrictions following her return to work; that the employing establishment harassed and discriminated against appellant on 14 occasions from October 16, 1992 to January 13, 1993, as alleged in her EEO complaint; that the employing establishment expected appellant to resume her full workload immediately after her August 1992 injury;³ and that appellant's supervisor made an abusive remark regarding another employee who had been transferred.

Appellant timely requested reconsideration on the basis that the hearing representative failed to discuss the medical evidence and submitted a July 18, 1995 medical report from Dr. Montalvo. On August 8, 1995 the Office denied appellant's request on the grounds that the evidence was insufficient to modify its prior decision. The Office noted that Dr. Montalvo's opinion that appellant developed paranoia because of her job was not based on work factors established as factual.

Appellant again requested reconsideration, arguing that her supervisor stated on appellant's application for disability retirement that appellant appeared to have a history of paranoia and that this statement constituted abuse, discrimination and harassment. Appellant also criticized the hearing representative's findings that alleged incidents were not factually established and that there was no evidence of error and abuse by management in various personnel actions, but provided no new evidence.

¹ Appellant filed a claim on August 14, 1992 stating that she had injured her neck trying to open her desk drawer. The Office accepted the claim and paid appropriate compensation.

² Appellant received a three-day suspension for her conduct, which was subsequently overturned. On that day appellant was taken by ambulance to the emergency room after she called the fire department from her office. She was treated and released.

³ The hearing representative noted that appellant was not assigned to full-time work until October 1, 1992, three weeks after she returned to work on September 8, 1992 and that the record contained no medical evidence of any disability at that time.

On August 31, 1995 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant modification of its prior decision. The Office noted that appellant's personal opinion that management acted improperly was not sufficient to establish that managerial actions constituted abuse, error, harassment or discrimination. The Office added that because neither compensable work factors nor error or abuse on the part of management had been established, there was no need to review the medical evidence.

Subsequently, appellant requested reconsideration and submitted a list of six questions regarding the work factors accepted as factual, including appellant's fear of losing her job; the employing establishment's refusal to place in her personnel folder appellant's suggestion award; memoranda from her supervisors regarding her workload request for leave and her use of the photocopying machine; the employing establishment's delay in filing her claim and paying continuation of pay; the proposed and rescinded three-day suspension; and appellant's performance appraisal. Appellant argued that as a result of her employment, a preexisting injury or illness was accelerated or aggravated while in the performance of duty and that management purposely took innumerable actions to jeopardize her health.

On January 8, 1996 the Office denied reconsideration on the grounds that appellant's request was *prima facie* insufficient to warrant review of the prior decision because she had submitted no additional relevant evidence or raised any argument of error in fact of law.

The Board finds that appellant has failed to establish that her emotional condition was sustained in the performance of duty.

Under the Federal Employees' Compensation Act,⁴ appellant 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 factors of her federal employment. To establish that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁵

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.⁶ There are distinctions regarding the type of work situation giving rise to an emotional condition which will be covered under the Act.

For example, disability resulting from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employing establishment

⁴ 5 U.S.C. §§ 8101-8193 (1974).

⁵ *Vaile F. Walders*, 46 ECAB 822, 825 (1995).

⁶ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

is covered.⁷ However, an employee's emotional reaction to an administrative or personnel matter is generally not covered⁸ and disabling conditions caused by an employee's fear of termination or frustration from lack of promotion are not compensable. In such cases, the employee's feelings are self-generated in that they are not related to assigned duties.⁹

Nonetheless, if the evidence demonstrates that the employing establishment erred or acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.¹⁰ However, a claimant must support her allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.¹¹

The initial question is whether appellant has alleged compensable employment factors as contributing to her condition.¹² Thus, part of appellant's burden of proof includes the submission of a detailed description of the specific employment factors or incidents which appellant believes caused or adversely affected the condition for which she claims compensation.¹³ If appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.¹⁴

In this case, the Board finds that appellant has identified no compensable work factors that are substantiated by the record and has failed to establish that the employing establishment either erred or acted abusively or unreasonably in the administration of personnel matters. The record reveals that appellant has made numerous allegations of abuse and harassment by her supervisors in regard to her assigned workload, performance appraisal and personnel actions, but has provided no evidence to support her contentions.¹⁵ To the contrary, the various memoranda and documents in the record establish that management's actions were taken in a fair and professional manner. While appellant strongly believed that she was treated badly by her supervisors and managers, her feelings about her work and administrative actions are self-generated and thus are not compensable under the Act.¹⁶

⁷ *Jose L. Gonzalez-Garced*, 46 ECAB 559, 563 (1995).

⁸ *Sharon J. McIntosh*, 47 ECAB ___ (Docket No. 94-1777, issued August 28, 1996).

⁹ *Barbara E. Hamm*, 45 ECAB 843, 850 (1994).

¹⁰ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

¹¹ *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

¹² *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

¹³ *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

¹⁴ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

¹⁵ *See Dinna M. Ramirez*, 48 ECAB ___ (Docket No. 94-2062, issued January 17, 1997) (finding that the Board need not consider psychiatric evidence because appellant failed to establish that the employing establishment acted abusively in denying her request for official time).

¹⁶ *See Sandra F. Powell*, 45 ECAB 877, 886 (1994) (finding that an employee's mere perception of harassment or

Dr. Montalvo opined that appellant's overall working situation resulted in stress and depression but he provided no medical rationale for this conclusion and in fact agreed in his July 18, 1995 report that there was "little factual evidence" to support the work factors alleged by appellant but not accepted by the Office as established.

While appellant claimed generally that her stress and anxiety resulted from harassment at work and a hostile environment, she has not alleged that a reaction to specific regular or specially assigned duties, such as typing, filing or interviewing clients caused or aggravated her emotional condition.¹⁷ Therefore, the Board finds that appellant has not established any compensable work factors under the Act and thus need not consider the medical evidence.¹⁸

Inasmuch as appellant has failed to meet her burden of proof in providing factual evidence supporting her allegations of error and abuse on the part of the employing establishment or her identification of employment factors or incidents alleged to have caused or contributed to her mental condition, the Board finds that the Office properly denied her claim.¹⁹

discrimination was not compensable.

¹⁷ See *Merriett J. Kauffman*, 45 ECAB 696, 703 (1994) (finding that appellant failed to allege or establish that specific work tasks or requirements assigned to him gave rise to his emotional condition).

¹⁸ See *Dinna M. Ramirez*, 48 ECAB ___ (Docket No. 94-2062, issued January 17, 1997) (finding that the Board need not consider psychiatric evidence because appellant failed to establish that the employing establishment acted abusively in denying her request for official time).

¹⁹ See *Raul Campbell*, 45 ECAB 869, 877 (1994) (finding that appellant failed to substantiate compensable factors of employment or allegations of error or abuse on the part of the employing establishment).

The January 8, 1996 and August 8 and 31, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
April 1, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member