

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JACQUELINE CAREY and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Chicago, Ill.

*Docket No. 96-1184; Submitted on the Record;  
Issued April 6, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty, as alleged; and (2) whether appellant sustained an allergic reaction causally related to factors of her federal employment.

The Board has duly reviewed the case record and finds that appellant has failed to establish a factual basis for her claim that she sustained an emotional condition 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. 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 workers' compensation. Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the conditions for which she claims compensation were caused or adversely affected by factors of her federal employment.<sup>1</sup> This burden includes the submission of a detailed description of the employment conditions or factors which appellant believes caused or adversely affected the condition or conditions for which she claims compensation. This burden also includes the submission of rationalized medical opinion evidence, based on a complete factual and medical background of the employee, which shows a causal relationship between the conditions for which compensation is claimed and the implicated employment factors or incidents.<sup>2</sup>

An alleged employment-related emotional condition is compensable when an employee experiences an emotional reaction to his or her regular or specially assigned employment duties or to a requirement imposed by the employment or has fear and anxiety regarding his or her

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<sup>1</sup> *June A. Mesarick*, 41 ECAB 898, 907 (1990); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>2</sup> *June A. Mesarick*, *supra* note 1 at 908 (1990); *see Walter D. Morehead*, 31 ECAB 188, 194 (1979).

ability to carry out his or her duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation.<sup>3</sup> Perceptions and feelings alone are not compensable.<sup>4</sup> If the Board finds that appellant's allegations are unrelated to the employee's regular or specially assigned work duties, they do not fall within the coverage of the Federal Employees' Compensation Act unless the evidence discloses error or abuse on the part of the employing establishment.<sup>5</sup>

On February 25, 1993 appellant, then a 50-year-old records analysis clerk, filed an occupational claim for "trauma from intense fear" and stated that the assistant regional commissioner, Jim Hovland, treated her insensitively by yelling at her, saying unpleasant things to her and failing to provide her with security when she got on the bus after work. Appellant stated that she required security as she feared an attack from a coworker who had threatened to beat her up when she left the building. Appellant stopped working on November 5, 1992. Appellant cites numerous incidents at work consisting of harassment or abuse by her coworkers or management which caused her stress. For example, appellant stated that the vice president of the union tried to have her manager charge her absent without leave (AWOL) in July 1992 because she attended another union's free luncheon. In a statement dated November 19, 1992, appellant's manager stated that appellant approached him stating that she had planned to attend the union's free luncheon and that the vice president of the union did not approach him about charging appellant AWOL.

Another example is that appellant alleged that her module manager, Donald Siere, who was promoted to a GS-12, threatened that she would not last a month once he had his promotion and that she filed an Equal Employment Opportunity (EEO) complaint against him because he called her white trash. In a statement dated November 17, 1992, Mr. Siere denied that he ever made those statements and that appellant ever filed an EEO complaint against him. Appellant alleges that on November 4, 1993 a coworker, Bettie Looper, pushed her on her back and shoulder from behind, her face came close to striking the desk and Ms. Looper grabbed her hand and slammed the receiver down. In a statement dated November 9, 1992, Ms. Looper stated that on November 4, 1992 she asked appellant whether she was aware that she should not use the telephone in someone else's module. She stated that appellant hung up the telephone forgetting that she was talking to someone, then picked up the receiver, told the individual she must get off the telephone and rushed out of the module without a word. By letter dated November 9, 1992, Ms. Looper denied bumping appellant or speaking rudely to her. In a letter dated November 16, 1992, appellant's immediate supervisor, Allen Tebbens, stated a purported witness, Alice Lofton, denied seeing Ms. Looper touch appellant in any way. In an undated letter, Mr. Hovland recorded that he had a discussion with appellant to address many of her complaints and she said everyone in her module was out to get her. In one instance, where she alleged that Mr. Siere made up a false promotion list with her name on it as a cruel joke, he said he would investigate it. In his November 17, 1992 letter, Mr. Siere stated he had merely joked to appellant that a name

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<sup>3</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>5</sup> *Dinna M. Ramirez*, 48 ECAB \_\_\_\_ (Docket No. 94-2062; issued January 17, 1997); see *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

resembling hers on a reassignment list must have been her. In an undated letter received by the Office on February 17, 1993, appellant's coworker, Evelyn Covington, stated that in reply to a question as to why she looked so sad, appellant told her that her coworkers and management were constantly mistreating her. In another letter dated February 18, 1994, Ms. Covington stated that she saw appellant being upset by "evil doing by management" because she would go down to her after "Don" left and saw her visibly upset by whatever he had said and she knew he had been saying something unpleasant.

By decision dated February 7, 1994, the Office of Workers' Compensation Programs denied appellant's claim, stating that the evidence of record failed to establish that appellant sustained an injury, as alleged. On February 18, 1994 appellant requested written review of the record before an Office hearing representative. By decision dated February 6, 1996, the Office hearing representative affirmed the February 7, 1994 decision.

In the present case, appellant has failed to establish a factual basis for her claim as she has presented no independent, corroborating evidence of the incidents she alleged occurred. Appellant cites numerous incidents of stress caused by either management or her coworkers but those incidents were either denied by the other participants involved or not sufficiently substantiated. In the absence of evidence corroborating that the alleged incidents occurred, appellant cannot establish her claim.<sup>6</sup> Ms. Covington's February 17, 1993 and February 18, 1994 statements are vague and do not mention any specific incidents. Therefore, they do not corroborate appellant's allegations. Moreover, none of the alleged incidents appellant referenced were part of her regular work duties and she has not shown management abused its discretion. Since appellant has failed to establish the requisite factual basis, it is not necessary to address the relevant medical evidence.<sup>7</sup> The Office provided appellant with numerous opportunities to submit corroborating evidence, but appellant was not responsive to this request. Appellant has therefore failed to meet her burden that she sustained an emotional condition in the performance of duty as alleged.

The Board also finds that appellant has failed to establish that she sustained an allergic reaction causally related to factors of her federal employment.

On January 23, 1995 appellant filed an occupational claim, alleging that she suffered watery nose and eyes and headaches from poor air quality consisting of toxics from paint and glue from engineering. The medical evidence appellant submitted to support her claim are reports from Dr. George Czajkowski, a Board-certified internist, dated February 7 and 21, 1995. In his February 21, 1995 report, Dr. Czajkowski stated that appellant complained of a runny nose, itchy eyes and difficulty breathing at work. He stated that it was very reasonable to assume that if there were allergens in the air such as dust, molds and mites, appellant might very well have these symptoms precipitated by these allergens which she stated were located at work. In his February 7, 1995 report, Form CA-17, Dr. Czajkowski, diagnosed upper airway hyperreactivity to airborne allergens at work. By letter dated October 31, 1995, the employing

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<sup>6</sup> *Sharon R. Bowman*, 45 ECAB 187, 195 (1993); *Ruthie M. Evans*, *supra* note 4 at 416, 425-26 (1990).

<sup>7</sup> *Bowman*, *supra* note 6 at 194 n.4 (1993).

establishment controverted appellant's allegations, noting that other clericals in the same work environment as appellant performed the tasks appellant performed without difficulty.

By decision dated November 1, 1995, the Office denied appellant's claim, stating that appellant failed to establish that the claimed condition or disability is causally related to the alleged employment injury. By letter dated November 5, 1995, appellant requested written review of the record by an Office hearing representative. By decision dated January 22, 1996, the Office hearing representative affirmed the November 1, 1995 decision. Appellant requested reconsideration of the Office's decision and submitted a survey from a health and safety committee dated February 23, 1995 which was conducted in response to employees' complaints about the air quality and included appellant's response. Appellant also resubmitted Dr. Czajkowski's February 7, 1995 report. By decision dated May 21, 1996, the Office denied appellant's reconsideration request.

In the present case, appellant has failed to present sufficiently rationalized medical evidence to establish that her irritated eyes, nose and headaches were causally related to factors of her federal employment. Dr. Czajkowski's February 21, 1995 report in which he stated that if there were allergens such as dust, mold and mites in the air appellant might very well have had her symptoms of a runny nose, itchy eyes and difficulty breathing precipitated by those allergens is vague and speculative and is therefore not probative.<sup>8</sup> His February 7, 1995 report, in which Dr. Czajkowski checked a "yes" box that appellant's condition was work related and stated allergic to airborne allergens at work, is insufficiently rationalized to establish causal relationship. The February 23, 1995 health survey did not contain any medical opinion and was not conclusive as to the air quality at appellant's workplace. The Office provided appellant with the opportunity to submit the requisite evidence but appellant was not responsive to this request. Appellant has therefore not met her burden of establishing that her watery eyes, runny nose and headaches were causally related to factors of her federal employment.<sup>9</sup>

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<sup>8</sup> See *William S. Wright*, 45 ECAB 498, 504 (1994).

<sup>9</sup> See *Victor J. Woodham*, 41 ECAB 345 (1989).

Accordingly, the decisions of the Office of Workers' Compensation Programs dated May 21, February 6 and January 22, 1996 and November 1, 1995 are hereby affirmed.

Dated, Washington, D.C.  
April 6, 1998

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member