

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BERTHA LAWSON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Salem, Va.

*Docket No. 96-1267; Submitted on the Record;
Issued April 7, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant 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. Where the disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.¹ 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 within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.²

The Office of Workers' Compensation Programs, in its July 11, 1995 decision, denying appellant's claim for job-related stress, found that appellant had not attributed her emotional condition to any factors that are covered under the Act. On December 7, 1995, the Office denied reconsideration of its July 11, 1995 denial.

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Michael Thomas Plante*, 44 ECAB 510 (1993).

The Office was correct in finding that appellant's reaction to the employing establishment's denial of her request for advanced sick leave is not covered under the Act.³ Her pending reassignment from her position as a licensed practical nurse to a position as a clerk is also not covered under the Act.⁴ Appellant's feeling that the clerk position would not utilize her skills and experience also is not covered under the Act, as it amounts to dissatisfaction with the type of work assigned, or desire to perform different duties.⁵

Appellant contends that the employing establishment's January 12, 1995, offer of two options -- disability retirement or acceptance of a medical clerk position -- was an improper accommodation under the Rehabilitation Act of 1973 of her disability related to her April 1992 employment injury to her back.⁶ As accommodation of disability is a personnel or administrative matter, appellant's reaction to the employing establishment's decision on accommodation could be covered under the Act, only if appellant can establish that the employing establishment's decision was in error. The Board, however, does not have the jurisdiction to make the determination whether the employing establishment's action violated the Rehabilitation Act of 1973. This is a matter within the purview of the Equal Employment Opportunity Commission (EEOC), with which appellant filed a complaint of discrimination on account of age, race and disability on March 20, 1995. Unless and until the EEOC issues a decision on this complaint, the Board cannot determine whether the employing establishment's January 12, 1995 letter and its decision not to accommodate appellant in a nursing position was in error.

Appellant has alleged her emotional condition, in part, to factors that can be covered under the Act: chronic pain from her employment injury.⁷ The Board will, therefore, analyze the medical evidence to determine whether it establishes that appellant's emotional condition is causally related to this compensable factor of employment. Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused or adversely affected by her employment. As part of this burden she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation.⁸

In a report dated August 22, 1994, Dr. John D. Cooley, a clinical psychologist, stated that appellant was "Having difficulty adjusting to the limitations the pain is causing. Finding her work situation to be more than she can handle even though she is on light-duty status." This is

³ *Steven M. Beebe*, 41 ECAB 633 (1990).

⁴ *Buck Green*, 37 ECAB 274 (1986).

⁵ *Purvis Nettles*, 44 ECAB 623 (1993).

⁶ In a report dated June 21, 1994, Dr. James M. Leipzig, a Board-certified orthopedic surgeon, imposed permanent work tolerance limitations on appellant.

⁷ *Arnold A. Alley*, 44 ECAB 912 (1993). The record indicates appellant sustained a back injury on or about April 23, 1992.

⁸ *Bruce E. Martin*, 35 ECAB 1090 (1984).

the only medical report submitted by appellant, that addresses the issue of appellant's pain and physical limitations. The Board finds that it is not sufficient to establish that appellant's emotional condition is causally related to chronic pain from her 1992 employment injury. Dr. Cooley has not provided a complete medical report, based on an accurate medical background, addressing appellant's 1992 injury whether it caused or contributed to her disability due to her claimed emotional condition. As the medical evidence in this regard is not sufficiently rationalized, appellant has not met her burden of proof.

The decisions of the Office of Workers' Compensation Programs dated December 7, 1995 and July 11, 1995 are affirmed.

Dated, Washington, D.C.
April 7, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member