

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of JOAN JEAN SHAFFER and DEPARTMENT OF THE NAVY,  
BANGOR NAVAL SUBMARINE BASE, Silverdale, Wash.

*Docket No. 96-2400; Submitted on the Record;  
Issued August 17, 1998*

---

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant sustained an emotional condition in the performance of duty.

On October 12, 1995 appellant filed a notice of occupational disease, claiming that her acute stress disorder was caused by harassment from her supervisors at work. Appellant claimed disability compensation from December 8, 1994 through March 14, 1995.

In support of her claim, appellant submitted three reports from Dr. Rakesh T. Chauhan, Board-certified in family practice, who stated that appellant had been a regular patient for several years and had come to him in December 1994 "for stress that appeared to be due to her work." Dr. Chauhan stated that appellant had had "some problems" with her immediate supervisor and the situation led to appellant's inability to work.

He diagnosed a work-related stress disorder, noting symptoms of headache, esophageal reflux, chest pain, weight loss, and increased blood pressure. Dr. Chauhan stated that the only solution to appellant's condition was a transfer out of her present department. When she returned to work on March 15, 1995, appellant was reassigned to another department.

The employing establishment controverted the claim, noting that on December 7, 1994 appellant was issued a disciplinary letter after verbal counseling had failed to correct excessive personal use of the telephones and violation of regulations regarding the long-distance lines. The employing establishment stated that appellant used sick leave through the next three months and filed two grievances and an Equal Employment Opportunity (EEO) complaint. The employing establishment added that appellant had been reduced in grade from a GS-7 equipment specialist to a GS-4 clerk-typist as a result of a reduction-in-force (RIF) in May 1991.

In response to the Office of Workers' Compensation Programs' inquiry, appellant stated that her condition "began immediately" when she was transferred to another department due to

the RIF and “noticed the hostile work environment.” Appellant also submitted letters from seven co-workers in support of her claim.

On May 2, 1996 the Office denied the claim on the grounds that appellant failed to establish that her emotional condition arose in the performance of duty. The Office noted that five of appellant’s allegations were unsubstantiated and that the seven incidents appellant believed contributed to her condition were not compensable employment factors.

The Board finds that appellant has not met her burden of proof in establishing that her emotional condition was caused by compensable work factors.

Under the Federal Employees’ Compensation Act,<sup>1</sup> 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.<sup>2</sup>

Workers’ compensation law does not cover each and every injury or illness that is somehow related to employment.<sup>3</sup> 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 is covered.<sup>4</sup> However, an employee’s emotional reaction to an administrative or personnel matter is generally not covered,<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> However, an

---

<sup>1</sup> 5 U.S.C. §§ 8101-8193. (1974).

<sup>2</sup> *Vaile F. Walders*, 46 ECAB 822, 825 (1995).

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>4</sup> *Jose L. Gonzalez-Garced*, 46 ECAB 559, 563 (1995).

<sup>5</sup> *Sharon J. McIntosh*, 47 ECAB \_\_\_ (Docket No. 94-1777, issued August 28, 1996).

<sup>6</sup> *Barbara E. Hamm*, 45 ECAB 843, 850 (1994).

<sup>7</sup> *Margreate Lublin*, 44 ECAB 945, 956 (1993).

employee must support her allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>8</sup>

The initial question is whether appellant has alleged compensable employment factors as contributing to her condition.<sup>9</sup> 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.<sup>10</sup> If appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.<sup>11</sup>

In this case, appellant described five situations that indicated a hostile work environment contributing to her emotional condition: (1) that her new supervisor stated publicly that she did not want appellant in her department; (2) that her new supervisor did not welcome her and did not speak to her "except to snarl at me whenever she could find the opportunity"; (3) that her new supervisor slammed her hand down on the desk on June 15, 1994 and frightened appellant; (4) that her supervisor overheard appellant's discussion with a co-worker about the lack of information on a pending office move and discussed the matter with her, using a "very nasty tone of voice," and closing her into a room; and (5) that whenever appellant asked about the move, she was "snarled at."

The Board finds that none of these incidents is supported by any corroborating evidence. To the contrary, the employing establishment submitted a detailed response to each of these incidents from the people involved. Appellant's supervisor denied the allegations, pointing out that she was glad to have appellant in her department to handle the workload, that she never slammed her hand on the desk, that she closed the door when appellant began making "wild accusations" after the supervisor asked her not to talk to telephone repair workers, and that appellant was kept apprised of the pending move as appropriate.<sup>12</sup>

Further, none of the co-workers' statements provided evidentiary support for appellant's specific allegations of harassment. In fact, none of the co-workers described witnessing any incidents of harassment or mistreatment. Thus, the Board finds that these incidents are not factually established.<sup>13</sup>

---

<sup>8</sup> *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

<sup>9</sup> *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

<sup>10</sup> *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

<sup>11</sup> *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

<sup>12</sup> See *Donald W. Bottles*, 40 ECAB 349, 353 (1988) (finding that an employee's frustration and depression resulting from an involuntary transfer are not compensable).

<sup>13</sup> See *Daniel B. Arroyo*, 48 ECAB \_\_\_\_ (Docket No. 95-62, issued November 22, 1996) (finding that while verbal altercations and a tense relationship with a supervisor may be compensable work factors if proven, appellant failed to support his allegations with probative evidence).

Appellant also alleged: (1) that the telephones functioned poorly at her workstation and when she questioned telephone repair workers, she was twice counseled by her supervisors; (2) that she was not kept properly informed about the office move; (3) that she did not get a new desk and her supervisor told everyone she did not want one; (4) that her supervisor became “furious” when she and a co-worker switched office furniture; (5) that she received a lower performance rating than expected; (6) that while she was on sick leave, she was placed on absent-without-leave (AWOL) status; and (7) that she was counseled and received a letter of warning about personal use of the office telephone system.

The Board finds that, while some of these incidents are factually substantiated, they are administrative and personnel matters that do not fall within the ambit of the Act unless there is evidence of error or abuse on the part of the employing establishment. While such personnel actions may be upheld, reversed, or modified through various procedures such as arbitration or the grievance process, the settlement of labor management disputes through such processes does not, in itself, establish that the employing establishment’s actions were either erroneous or unreasonable.<sup>14</sup> Nor does the resolution of a particular dispute in appellant’s favor demonstrate that the subject matter of the grievance was an employment factor.<sup>15</sup>

Appellant filed two grievances and an EEO complaint, but this evidence does not demonstrate that the employing establishment erred or acted unreasonably in dealing with either the telephone abuse or AWOL status issues. The record shows that appellant was never placed on AWOL by management. The record also shows that appellant received a fully satisfactory performance rating or higher during 1991 to 1994.

The document settling appellant’s EEO complaint and transferring her to a new department specifies that the agreement is not an admission of wrongdoing.<sup>16</sup> Thus, the filing and resolution of appellant’s grievances and EEO complaint are insufficient to establish either a compensable work factor or erroneous or abusive actions by the employing establishment.<sup>17</sup>

Appellant has not alleged that a reaction to specific regular or specially assigned duties, such as typing, filing, or other secretarial duties, caused or aggravated her emotional condition.

---

<sup>14</sup> *Barbara J. Nicholson*, 45 ECAB 803, 810 (1994).

<sup>15</sup> *Paul Trotman-Hall*, 45 ECAB 229, 238 (1993).

<sup>16</sup> The employing establishment agreed to withdraw the December 7, 1994 letter of warning and appellant signed a memorandum indicating her understanding of the use of government telephones and her intent to abide by the regulations.

<sup>17</sup> See *Diane C. Bernard*, 45 ECAB 223, 228 (1993) (finding that the mere filing of a grievance was insufficient to establish that the employing establishment acted erroneously in disciplining appellant); cf. *Abe E. Scott*, 45 ECAB 164, 173 (1993) (remanding the claim for medical analysis because appellant’s grievance disputing that he had lied to his foreman was sustained, thus substantiating a compensable factor of employment).

Her perception that the work atmosphere was hostile and degrading is not a compensable work factor.<sup>18</sup> Inasmuch as appellant has failed to meet her burden of proof in providing factual evidence supporting the employment factors or incidents alleged to have caused or contributed to her condition, the Board finds that the Office properly denied her claim.<sup>19</sup>

The May 2, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
August 17, 1998

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

---

<sup>18</sup> See *Alberta Kinloch-Wright*, 48 ECAB \_\_\_\_ (Docket No. 95-1254, issued April 23, 1997) (finding that appellant's own perceptions of harassment and hostility from her supervisor were neither specific nor independently corroborated and were therefore not compensable under the Act).

<sup>19</sup> 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).