

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE M. PHILLIPS and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Pittsburgh, Pa.

*Docket No. 96-390; Submitted on the Record;
Issued February 10, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an emotional condition while in the performance of duty.

On February 17, 1995 appellant, then a 52-year-old food service worker, filed a claim for compensation benefits alleging that on that day she became emotionally distressed due to working conditions.¹

On April 11, 1995 the Office notified appellant that it needed additional information in order to properly develop her claim and asked her to submit information regarding which employment-related factors or incidents contributed to her emotional condition.

On April 28, 1995 the Office, in a second request for information, advised appellant's representative that appellant had not yet replied to its April 11, 1995 request and that the Office would decide the case on May 5, 1995 based on the evidence in the record at that time.

In a medical report dated March 24, 1995 and received by the Office May 1, 1995, Dr. Henry C. Groff, appellant's treating physician who is Board-certified in psychiatry and neurology, stated that appellant was under his care for a depressive disorder and was totally disabled for work until June 24, 1995 at which time he would reevaluate whether she could return to duty.

On May 5, 1995 the Office, in a decision, denied appellant's claim on the grounds that the evidence of record failed to establish that she sustained an injury as alleged.

¹ On March 1, 1995 the employing establishment notified appellant that it proposed to remove her due to her disrespectful conduct, her absent without leave status, and her slanderous and defamatory statements. On April 18, 1995 the employing establishment notified appellant that she would be terminated effective April 21, 1995.

In a facsimile transmission sent on May 9, 1995 appellant stated that she had been harassed at work since 1989 when she refused to serve chicken which she believed to be “bad.” She then listed events which occurred between 1989 and 1994. Regarding the incident of February 17, 1995 appellant stated that her supervisor spoke to her in a nasty tone, telling her to do what she was told to do, that her supervisor began yelling at her saying that she was tired of appellant’s “whining or something like that,” and that the supervisor tried to hit her with a door.

In a medical report dated May 10, 1995, Dr. Groff stated that appellant harbored anger towards the way she was treated at work. Specifically, he noted appellant’s concern that since she refused to serve what she considered to be bad chicken in 1989 she had “had problems” at work. Appellant alleged that new management attempted to squeeze her out of her position because of her seniority, that her supervisor yelled at her, and that she was reassigned to four different positions in a short time period. Appellant also alleged that a supervisor pushed open a door in an intimidating manner as the supervisor was leaving a room.

In a letter dated May 15, 1995, appellant filed a request for reconsideration of the Office’s May 5, 1995 decision denying benefits.

On August 22, 1995 the Office, in a merit decision, denied appellant’s request for reconsideration on the grounds that the evidence failed to justify modification of the prior decision.

The Board finds that appellant had failed to establish that an injury as alleged occurred on February 17, 1995.

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers’ compensation. These injuries occur in the course of employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee’s frustration over not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Where 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.² On the other hand, where the disability results from an employee’s emotional reaction to employment matters but such matters are not related to the employee’s regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within coverage of the Act.³

In the present case, appellant has not alleged that her emotional condition arose as a reaction to her regular or specially assigned duties. Rather, she has attributed her condition to

² See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Id.*

acts of harassment or discrimination, such as attempts to squeeze her out because of her seniority, being yelled at by her supervisor, being reassigned four different times, and having had her supervisor attempt to hit her with a door.

Regarding the allegation that appellant's supervisor tried to hit her with a door, Ms. Ann McCartney, an employing establishment supervisor, stated that, at a meeting held in her office on February 17, 1995, appellant stated that "[Another supervisor] just jerked the door open, trying to smash my face. If [she] hit me, I'm becoming violent!" Ms. McCartney then stated that she did not see the incident noting that appellant was not standing close enough to the door to be hit when it opened. The Board finds that appellant has not established that her supervisor attempted to hit her with a door.

The occurrence of other incidents cited by appellant, such as management forcing her out, her supervisor yelling at her and her frequently changed assignments have not been substantiated as factual by corroborating evidence. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative reliable evidence.⁴ For harassment to give rise to a compensable disability, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions are not compensable. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.⁵ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁶

Based on the evidence of record, the Board finds that appellant has not established that her emotional reaction arose out of her federal employment.

Since appellant has failed to allege a compensable factor of employment that is substantiated by the record, she has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.⁷

⁴ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁵ See *Sheila Arbour (Vincent E. Arbour)*, 43 ECAB 779 (1992); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991); *Arthur F. Hougens*, 42 ECAB 455, 462 (1991); *Ruthie M. Evans*, *supra* note 4.

⁶ *Ruthie M. Evans*, *supra* note 4.

⁷ Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

The decisions of the Office of Workers' Compensation Programs dated August 22 and May 5, 1995 are affirmed.

Dated, Washington, D.C.
February 10, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member