

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHLEEN D. KLEE and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, West Palm Beach, Fla.

*Docket No. 96-2150; Submitted on the Record;
Issued July 15, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

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

The Board has carefully reviewed the case record and finds that appellant has failed to meet her burden of proof in establishing that her anxiety and depression were caused by work factors.

Under the Federal Employees' Compensation Act,¹ appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment. To establish that he 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 his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.²

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.³ There are distinctions regarding the type of work situation giving rise to an emotional condition that 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

¹ 5 U.S.C. §§ 8101-8193 (1974).

² *Vaile F. Walders*, 46 ECAB 822, 825 (1995).

³ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

is covered.⁴ However, an employee's emotional reaction to an administrative or personnel matter is generally not covered,⁵ 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.⁶

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.⁷ However, a claimant must support his allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.⁸

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

In this case, appellant, a 58-year-old logistics assistant, filed a notice of occupational disease on June 3, 1994, alleging that her anxiety and depression gradually built up from January through November 1993 due to the following factors: the lack of mandatory training and inadequate training in automated systems; loss of personnel and the nonavailability of higher grade technicians to assist appellant; insufficient time to accomplish all assigned duties; "extremely stringent" performance standards; and reorganization and downsizing of appellant's employing establishment.

Appellant added that she received her mid-term performance evaluation in mid November 1993 and her complaint that her position description "unfairly assigned a full range of

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

⁵ *Sharon J. McIntosh*, 47 ECAB ____ (Docket No. 94-1777, issued August 28, 1996).

⁶ *Barbara E. Hamm*, 45 ECAB 843, 850 (1994).

⁷ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

⁸ *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

⁹ *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

¹⁰ *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

¹¹ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

duties in two very diverse job disciplines” was brushed aside. She was told that she was expected to complete all tasks and the standard was “perfection.” Appellant concluded:

“In my efforts to comply with all expectations, stress I had begun to experience prior to the performance evaluation began to escalate, manifesting itself in such symptoms as gastrointestinal pain, fatigue, dizziness, headaches and rashes. Severe criticism from and occasional conflicts with my manager continued: my physical and emotional distress increased. On [December 20, 1993] my condition was so unbearable, I sought professional help.”

Appellant resigned from the employing establishment, effective May 3, 1994.

On August 17, 1994 the Office of Workers’ Compensation Programs informed appellant that she needed to describe in detail the work factors or incidents that contributed to her emotional condition and to submit a comprehensive medical report from her treating physician explaining how these work factors caused her condition. The Office added that the employing establishment controverted appellant’s claim and that it was her burden to prove her allegations against the employing establishment.

In response appellant submitted a lengthy typed statement detailing various incidents at work that caused her stress and including examples of her daily work log, memoranda, performance evaluations, award recommendations and work forms. The employing establishment also responded to the Office’s inquiry with comments on appellant’s numerous allegations of harassment by her supervisors.

On March 14, 1995 the Office denied appellant’s claim on the grounds that the evidence failed to establish that her emotional condition occurred in the performance of duty. The Office noted that the work factors cited by appellant were either not compensable or not factually established.

Appellant timely requested a written review of the record. On February 7, 1996 the hearing representative denied appellant’s claim on the grounds that she had failed to establish a factual basis for her allegations of overwork and unfair treatment by her supervisors.

Appellant timely requested reconsideration on May 14, 1996, noting that she would submit letters from individuals who had known her and that she was unable to obtain professional legal advice. On May 22, 1996 the Office denied appellant’s request on the grounds that her letter neither raised substantive legal questions nor included new and relevant evidence.

The Board finds that, although appellant submitted a detailed description of incidents at work that she believed caused her emotional condition, she has failed to provide probative and reliable evidence in support of her allegations. The only corroborating evidence supplied by appellant was a contract analyst’s statement of her views of the problems inherent in downsizing at the analyst’s agency. Obviously, this document is not relevant to appellant’s workplace.

Appellant stated that the incidents demonstrated how “eventually all duties, no matter how minimal ... or complicated, were performed in an atmosphere of suspicion, hostility,

unreasonable expectations, unfairness and other environmental characteristics of a negative nature, all of which were detrimental to her health.” Appellant alleged that she was “an almost daily recipient of negative criticism” from her supervisors, but the record reflects that her performance was rated fully satisfactory or higher, and she was awarded at least two quality step increases.

The record also reflects that appellant’s relationship with her newly appointed supervisor in 1993 to 1994 was far from ideal. In describing the preparation of the annual files plan, appellant related that she disagreed with her supervisor’s directions and “was not personally pleased” with the result of her work. However, self-generated feelings in reaction to supervisory requests or assignments are not compensable under the Act.¹²

In other incidents involving a shipment of rubber gloves, typing of an important letter, handling of a waste treatment bill, and the use of computer file discs, appellant criticized her supervisor’s approach and described her own reactions, but failed to demonstrate how she was overworked or harassed by management.¹³ Appellant’s complaints regarding the manner in which her supervisor performed her own job or exercised her supervisory discretion fall outside the scope of the Act’s coverage, unless the evidence establishes that the employing establishment erred or acted unreasonably in administrative matters.

While the atmosphere in her office may not have been as teamwork-oriented as appellant liked, she has produced no evidence of error or abuse on the part of the employing establishment.¹⁴ Appellant’s complaints about frequent changes in procedure and her job security fears in view of the potential reorganization of her agency are not covered under the Act.¹⁵ Finally her emotional reactions to her November 1993 mid-term evaluation and her pending performance appraisal are again self-generated feelings and thus not compensable work factors.

¹² *Sandra F. Powell*, 45 ECAB 877, 886 (1994) (finding that an employee’s mere perception of harassment or discrimination was not compensable);

¹³ *See Frank A. McDowell*, 44 ECAB 522, 524 (1993) (finding that while overwork is a compensable employment factor, appellant failed to substantiate his allegation that he was overworked).

¹⁴ *See Daniel B. Arroyo*, 48 ECAB ____ (Docket No. 95-62, issued November 22, 1996).

¹⁵ *See Donald E. Ewals*, 45 ECAB 111, 123 (1993).

The May 26 and February 7, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
July 15, 1998

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member