

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MAUDINE VACTOR and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Little Rock, Ark.

*Docket No. 96-2310; Submitted on the Record;
Issued July 2, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

In September 1995 appellant, then a 49-year-old licensed practical nurse and clerk-typist, filed a claim for compensation, alleging that anxiety from the employing establishment's consideration of her claim for workers compensation was causing stress and severe depression. She stated that she had been referred to physicians for second and third opinions and was threatened with the stoppage of her compensation which caused her to suffer more and more pain, leading to stress and depression.

In a January 16, 1996 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that her claim was not timely filed. In an accompanying memorandum, an Office claims examiner stated that appellant's injury occurred on January 29, 1987 but written notice of the injury was not provided until September 25, 1995. She indicated that appellant was aware or reasonably should have been aware of a relationship between employment factors and her claimed condition by January 29, 1987 the last date she worked at the employing establishment. The claims examiner noted that appellant had been off work since her back injury on May 15, 1983. She concluded that appellant had not filed her claim for compensation within three years of the date of her injury and that there was no evidence that her immediate supervisor had knowledge of the injury within 30 days of when appellant became aware or reasonably should have been aware that her condition was reasonably related to her employment.

The Board finds that appellant has not established that she sustained an injury in the performance of duty.

Appellant claimed that she began to have an emotional condition because the employing establishment referred her to physicians and threatened to terminate her compensation. However, those actions were performed by the Office, not the employing establishment.

Appellant was injured on May 15, 1983 while lifting a patient. Her claim was accepted for lumbar strain and aggravation of a preexisting nerve root problem at L5-S1 and the Office paid appropriate compensation. On October 7, 1993 the employing establishment offered appellant a position as a prosthetics clerk. Appellant refused the position. In an October 24, 1994 decision, the Office terminated appellant's compensation for refusing to accept suitable work.

Appellant's claim therefore is that she sustained an emotional condition due to the actions of the Office in processing her workers' compensation claim. Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes with the coverage of the 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 his frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.¹ The Board has held that an emotional condition that is alleged to have been caused by the actions of the Office in the consideration of a claim for compensation does not rise out of the employment. An emotional condition arising out of these circumstances is not within the scope of the Act.² Appellant's alleged emotional condition, therefore, did not arise within the performance of duty.³

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

² *Virgil M. Hilton*, 37 ECAB 806 (1986).

³ The Office denied appellant's claim on the grounds that she did not submit her claim within the applicable three-year time limit set forth by the Act. However, appellant's claim for an emotional condition was an effort to claim a consequential injury arising from the original injury of May 15, 1983. In such a circumstance, the statutory time limits of the Act are applied against the claim for original injury, not any subsequent claim for a consequential injury. It was therefore error by the Office to deny appellant's claim on the grounds that it was not timely filed. However, in light of the Board's holding in this case, the Office's error was harmless.

The decision of the Office of Workers' Compensation Programs, dated January 16, 1996, is hereby affirmed.

Dated, Washington, D.C.
July 2, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member