

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARLA C. THOMPSON and DEPARTMENT OF VETERANS AFFAIRS,  
NORTHERN CALIFORNIA SYSTEM OF CLINICS, Pleasant Hill, Calif.

*Docket No. 96-1995; Submitted on the Record;  
Issued June 26, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

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

On May 9, 1995 appellant, then a 29-year-old clerk-typist, filed a notice of traumatic injury alleging that she suffered emotion distress because her supervisor threatened her, stated her performance would always be poor, called her names and made accusations regarding a union matter. Appellant indicated that the incident occurred on April 18, 1995.

By letter dated March 28, 1995, appellant's supervisor, Carmelita M. Bulaon, indicated that appellant refused to participate in a course on a copying machine because she was going to request a reassignment.

In a report dated April 19, 1995, Dr. Kent Andrews, a clinical psychologist, diagnosed adjustment disorder with mixed anxiety and depressed mode and found that appellant was unable to return to her job. Dr. Andrews noted that appellant complained of severe job stress. This stemmed from an April 18, 1995 meeting with supervisor T.Z. Dandridge. Appellant indicated to Dr. Andrews that Mr. Dandridge insulted, accused and threatened her. She indicated that Dandridge indicated he had a problem with her, threatened to terminate her and called her a names. Dr. Andrews stated that appellant remained emotionally stressed from the April 18, 1995 meeting.

Subsequently, T.Z. Dandridge, appellant's supervisor, indicated that he did not threaten to terminate appellant during their April 18, 1995 meeting. Mr. Dandridge submitted a March 28, 1995 report, indicating that appellant previously apologized for inappropriate behavior due to stress and leave records indicating that appellant took sick leave on March 28, 1995 due to stress. Mr. Dandridge further indicated that appellant gave employees' conflicting information regarding annual leave, thereby disseminating incorrect information to employees in her capacity as a union steward without prior discussion with a supervisor.

In a statement sated May 17, 1995, Ms. Bulaon further indicated that at the April 18, 1995 meeting with supervisors Dandridge and Barbara Neff, appellant was advised of the requirement to discuss union business only on authorized time. Ms. Bulaon indicated that Dandridge did not call appellant any names.

On May 18, 1995 Dr. Andrews repeated his previous diagnosis and indicated that appellant was able to return to work in the engineering department.

In a decision dated May 30, 1995, the Office of Workers' Compensation Programs denied appellant's claim because she failed to establish that her stress condition was sustained in the performance of duty.<sup>1</sup>

The Board finds that appellant has not met her burden of proof to establish her emotional condition is causally related to her Federal employment.

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 the 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 secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her 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.<sup>2</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.<sup>3</sup> To establish his claim 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>4</sup>

In the present case, appellant alleged that she suffered emotional stress following an April 18, 1995 meeting with her supervisors. Both appellant and the employing establishment's

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<sup>1</sup> The record indicates that subsequent to the issuance of the Office's May 30, 1995 decision, appellant submitted additional evidence. As this evidence was not before the Office when it issued its decision, the Board has no jurisdiction to review it on the present appeal. *See* 20 C.F.R. § 501.2; *James F. Campbell*, 5 ECAB 35 (1952).

<sup>2</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>4</sup> *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

supervisors indicated that the purpose of the meeting was to discuss appellant's job performance and the need to request official time for union activity. Consequently, the meeting involved administrative or personnel matters that are not compensable factors of employment, absent evidence of error or abuse by the employing establishment.<sup>5</sup>

Appellant alleged abusive behavior by his supervisor, T.Z. Dandridge, at the meeting. Appellant indicated that Dandridge threatened her with termination and called her names, indicating that he "had a problem with her." However, these allegations were denied by both Mr. Dandridge and Ms. Bulaon. Mr. Dandridge explained that he did not say he had a problem, with appellant but explained that there was a problem in appellant providing incorrect information to employees regarding the use of annual leave in her capacity as a union steward. It was also noted that they discussed appellant's need to request official time performing union activities.<sup>6</sup> The Board accordingly finds that appellant has not alleged and substantiated a compensable factor of employment. The Office properly denied her claim. Since no compensable factor of employment has been established, the Board will not address the medical evidence.<sup>7</sup>

The decision of the Office of Workers' Compensation Programs dated May 30, 1995 is affirmed.

Dated, Washington, D.C.  
June 26, 1998

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>5</sup> See *Donald E. Ewals*, 45 ECAB 111 (1993).

<sup>6</sup> See *Marie Boylan*, 45 ECAB 338 (1994) (discussing the necessity of official time as a requirement of employment to perform representational functions).

<sup>7</sup> *Margaret S. Krzycki*, 43 ECAB 496 (1992).