

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARCEL STALEY and DEPARTMENT OF VETERANS AFFAIRS,
AUDIE L. MURPHY MEMORIAL VETERANS HOSPITAL, San Antonio, Tex.

*Docket No. 96-2025; Submitted on the Record;
Issued June 2, 1998*

DECISION and ORDER

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

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty on or before December 3, 1994 as alleged.

On May 17, 1995 appellant, then a 39-year-old emergency telephone operator, filed a notice alleging that she sustained an emotional condition in the performance of duty on or before December 3, 1994. Appellant explained that a November 5, 1994 physical examination revealed "mental and medical findings" prompting her to seek further treatment on December 3, 1994. She alleged that her stress condition was caused by having insufficient "rest and time to [her]self for recovery," and not being given time to attend prescribed counseling and other medical appointments. Appellant also noted treatment for a recently discovered fibroid tumor. On the reverse of the form, appellant's supervisor, Claude O. Ellis III, noted that appellant had worked rotating shifts and days, and was terminated from the employing establishment as of April 14, 1995.

An employing establishment appointment log shows that appellant sought psychiatric care from a Dr. McQueen on several dates between January 14 to August 15, 1995, as well as an April 18, 1995 sigmoidoscopy, and periodic nutrition counseling and nurse visits.¹

By letters dated July 14 and August 14, 1995, the Office advised appellant of the type of medical and factual evidence needed to establish her claim. The Office requested that appellant submit a detailed description of the employment incidents alleged to have caused her claimed condition, a description of nonoccupational life stresses, and a comprehensive medical report from her attending physician containing medical rationale explaining how and why the alleged employment incidents would cause the claimed medical condition.

¹ There are no medical reports of record regarding treatment by Dr. McQueen, the sigmoidoscopy, or any other treatment appellant may have received.

The employing establishment submitted copies of disciplinary proceedings against appellant regarding her use of leave. A January 5, 1995 letter of admonishment indicates appellant was absent without leave (AWOL) for 8 hours on November 27, 1994 as she did not obtain supervisory permission for her absence, and did not provide requested medical excuses for sick leave used on November 26, December 1, 2, 8 and 9, 1994.²

By decision dated November 27, 1995, the Office denied appellant's claim on the grounds that fact of injury was not established. The Office found that there was insufficient evidence to support that the alleged employment incidents occurred at the times, places and in the manners alleged. The Office further found that appellant had submitted insufficient rationalized medical evidence to establish that she sustained a medical condition resulting from the alleged employment factors.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty on or before December 3, 1994 as alleged.

To establish appellant's occupational disease claim that she has sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized 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.³ Such medical opinion must be based on a complete factual and medical history, be of reasonable medical certainty, and be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁴

However, workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. When an employee's disability results from an emotional reaction to employment matters unrelated to his or her regular or specially assigned work duties or job requirements, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.⁵

² The remainder of the documents pertain to incidents after December 3, 1994. At a January 20, 1995 meeting with Mr. Ellis and appellant regarding her unauthorized use of sick leave on January 3, 4, 11 to 14, 16 and 17, 1995 she was noted as stating that she wanted "people to mind their own business and leave [her] alone." Appellant was issued a January 30, 1995 letter of counseling regarding abuse of sick leave from October 7, 1994 to January 23, 1995. The Office proposed to suspend appellant in a February 7, 1995 letter due to an unauthorized trade of duty shift on January 9, 1995, and being AWOL on February 4, 1995. Appellant was AWOL from February 10 to 20, 1995. At a February 22, 1995 meeting with Mr. Ellis and another supervisor, appellant stated that she was under a doctor's care and was preparing for medical testing, but did not provide documentation. Appellant requested a nonrotating shift, and noted that her mother had passed away in June 1994. Appellant was suspended from duty from February 26 to March 11, 1995, and ultimately removed from the employing establishment effective April 14, 1995.

³ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *Id.*

⁵ *Donna Faye Cardwell*, *supra* note 3; *Lillian Cutler*, 28 ECAB 125 (1976).

Appellant has failed to provide a description of specific allegations as to those employment factors she alleges caused her claimed stress condition. Although advised by the Office's July 14 and August 14, 1995 letters of the need to submit a detailed factual statement describing the employment incidents alleged to have caused her emotional condition, appellant did not submit such a statement.

Appellant's May 17, 1995 claim form does state that appellant attributed her condition in part to being denied sick leave to attend medical appointments. The Board notes that administrative disapproval of sick leave is not a compensable factor of employment under the Act.⁶ There is insufficient evidence to establish error on the part of the employing establishment in the disciplinary proceedings brought. Appellant also alleged that she had insufficient "rest and time to [her]self" on or before December 3, 1994. However, appellant did not specifically allege that her job duties caused her to have insufficient rest, that she was overworked, or that her rotating shift schedule caused or contributed to her medical condition.⁷

Further, appellant did not submit any medical evidence establishing the existence of the claimed emotional condition. The employing establishment medical appointment log notes a variety of appointments from October 1994 through August 1995, including sessions with Dr. McQueen, a psychiatrist. However, there are no medical reports of record from Dr. McQueen or any other physician. Although advised by the Office's July 14 and August 14, 1995 letters of the need to submit all medical reports relating to the claimed condition, appellant did not submit any medical evidence. Therefore, appellant has not established a *prima facie* claim for a the stress condition.

As the evidence of record fails to establish a compensable factor of employment, the Board finds that appellant has failed to establish that her claimed emotional condition is causally related to her federal employment.

The decision of the Office of Workers' Compensation Programs dated November 27, 1995 is hereby affirmed.

Dated, Washington, D.C.

⁶ *Joseph Dedonato*, 39 ECAB 1260 (1988).

⁷ The Board has held that rotating shift work may rise to a compensable factor of employment. *Janice Balan*, 37 ECAB 485 (1986).

June 2, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member