

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BETTIE J. CONLEY and DEPARTMENT OF THE NAVY,  
NAVAL AIR STATION, Jacksonville, Fla.

*Docket No. 96-480; Submitted on the Record;  
Issued March 17, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

On January 18, 1995 appellant, then a 49-year-old Equal Employment Opportunity (EEO) specialist, filed an occupational disease claim, alleging that she sustained stress and depression which she first realized was work related on December 14, 1994 but which had been progressing since 1992. Appellant identified the following as causative factors of her condition on her complaint form and in supplemental statements: she was being harassed by her supervisors and others due to her race and having filed EEO complaints; her supervisor micro-managed her work and discussed deficiencies in her work with subordinate employees; she was not given the same permanent support staff as other employees at her grade level; she was treated in a demeaning manner at meetings and in her workplace; her assistant was given more credence than her in discussions concerning work assigned; she was given misinformation by Robert Thompson regarding how her occupational disease claim would be received by the employing establishment; she was targeted by Kathryn Marti, her former supervisor and Juanita Holley, her supervisor, a GS-13 position in her area for which she was qualified was left vacant without proper explanation; her suggestions on programs for which she was responsible were not followed; Ms. Marti humiliated her by reorganizing her desk in front of coworkers; she sustained stress in organizing a multicultural observance for the employing establishment; she sustained stress in completing required reports for the employing establishment and was overworked during the process; her performance appraisals were improperly lowered from 1992 to 1994; and there was a general atmosphere of race-based discrimination at the employing establishment.

In a decision dated January 31, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that fact of injury was not established. In merit decisions dated March 14, April 19, September 20 and November 13, 1995, the Office denied

appellant's requests for reconsideration on the grounds that the evidence submitted with her requests was not sufficient to warrant modification of the Office's prior decision.

The Board has carefully reviewed the entire case record in the present appeal and finds that this case is not in posture for decision

The initial question presented in an emotional condition claim is whether appellant has alleged and substantiated compensable factors of employment contributing to her condition. 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 disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from factors such 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 desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.<sup>1</sup> When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.<sup>2</sup> In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.<sup>3</sup>

In the present case, appellant has substantiated two compensable factors of employment. Most of the incidents and exposures identified by appellant as leading to her depression and stress are not compensable factors of employment. Specifically, appellant expressed dissatisfaction concerning Ms. Marti's management style, noting that she reorganized appellant's desk, purportedly to help her organize her work, on two different occasions and micro-managed appellant's work. Appellant's complaints concerning the manner in which her supervisor performed her duties as a supervisor or the manner in which she exercised her supervisory discretion fall, as a rule, outside of compensable factors of employment.<sup>4</sup> Her complaints are analogous to frustration over not being allowed to work in a particular job environment and are therefore not compensable. Similarly, appellant complaints concerning dissatisfaction with her assistant, differences in her position as compared to other EEO specialists and complaints about

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<sup>1</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>2</sup> *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985).

<sup>3</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>4</sup> *Donald E. Ewals*, 45 ECAB 111 (1993); *see also David W. Shirey*, 42 ECAB 783 (1991).

her physical office setup are deemed as complaints about not being able to work in a particular job or work environment and are therefore not compensable. Appellant has also alleged that she received improper decreases in her ratings of record on performance appraisals. Although performance appraisals and within-grade increases are generally related to employment, they are an administrative function, and the assessment of performance is not covered under the Act unless evidence discloses that the employing establishment acted unreasonably or abusively. She has not presented any probative evidence of error or abuse. Appellant also has not alleged any specific error or abuse by the employing establishment in failing to fill a permanent GS-13 position which she believed she was qualified to fill.

Appellant has also alleged several incidents which she asserts constituted harassment or discrimination. Actions by coworkers or supervisors that are considered in harassing nature may constitute compensable factors of employment to the extent that the implicated disputes and incidents are established as arising in and out of the performance of duty.<sup>5</sup> Mere perceptions or feelings of harassment, however, are not compensable. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations of harassment with probative and reliable evidence.<sup>6</sup> Appellant failed to provide any such probative and reliable evidence in the instant case. She indicated that Mr. Thompson, a supervisor implied that the employing establishment would controvert her claim, however, the decision of whether or not to file a controversion to a claim for workers' compensation is not a requirement that arises within the scope of appellant's employment. Consequently, this is not a compensable factor of employment under the Act. Appellant has made general statements that the work environment at the employing establishment is tainted by racial discrimination, that she was targeted by her supervisors, that she was treated in a demeaning fashion at meetings and in general by her supervisors and coworkers and that coworkers helped management develop plans to aid in her downfall. Appellant has not offered any specific incidents of harassment or alleged discrimination by her supervisors or coworkers in relation to her claim. Rather, appellant has submitted documentation concerning the types of discrimination it is her duty to recognize and call to the attention of employing establishment management. As appellant has not substantiated any perceived incidents of harassment or discrimination, any emotional condition arising out of her perceptions or fears is not compensable as it is self-generated.

The two compensable factors of employment identified by appellant were that she was overworked while completing required reports for the employing establishment in December 1993 through January 1994 and December 1994 and had difficulty in organizing a multicultural event for the employing establishment for October 1994. Both the reports and the organization of the multicultural event are required duties of appellant's position. When an employee experiences emotional stress in carrying out her employment duties, or has fear and anxiety regarding her ability to carry out her duties and the medical evidence establishes that the disability results from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability resulted from the employee's reaction to a special assignment or

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<sup>5</sup> See *Marie Boylan*, 45 ECAB 338 (1944); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

<sup>6</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

requirement imposed by the employing establishment or by the nature of her work.<sup>7</sup> Both Ms. Marti, appellant's acting supervisor during December 1993 and Ms. Holley, appellant's supervisor after March 1994, confirmed that appellant had difficulty completing the Affirmative Action Employment Program/Minorities and Woman Accomplishment (AEP) report during 1993 and 1994, that she had to work overtime due to the delinquency of that report, and that her assistant was unavailable for help during 1994 due to illness in the assistant's family. Ms. Marti also acknowledged that Mr. Gregg imposed a midnight deadline for the completion of the 1994 AEP report on December 1, 1994 and that she worked with appellant until 10:30 p.m. on those reports and that appellant was visibly upset and crying during this time period. She also noted problems appellant had with the organization and implementation of the multicultural observance. Therefore, appellant has identified and substantiated two compensable factors of employment.

As appellant has established two compensable factors of her employment, the Office must base its decision on an analysis of the medical evidence.<sup>8</sup> Appellant has submitted medical evidence from Dr. Judith Hallstrom, a Board-certified psychiatrist, which addresses the issue of whether appellant's claimed condition is causally related to factors of her federal employment. Since the Office found that there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded for that purpose.<sup>9</sup>

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<sup>7</sup> *Joel Parker, Sr.*, 43 ECAB 220 (1991).

<sup>8</sup> *See Lorraine E. Schroeder*, 44 ECAB 323 (1992); *Margaret S. Krzycki*, 43 ECAB 496 (1992); *Norma L. Blank*, 43 ECAB 384 (1992).

<sup>9</sup> *See generally Dodge Osborne*, 44 ECAB 869 (1993).

The decisions of the Office of Workers' Compensation Programs dated November 13, September 20, April 19, March 14 and January 31, 1995 are set aside and this case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.  
March 17, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Michael E. Groom  
Alternate Member