

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANET R. ABBINANTI and DEPARTMENT OF THE NAVY,
San Diego, Calif.

*Docket No. 95-2267; Submitted on the Record;
Issued May 6, 1998*

DECISION and ORDER

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

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

On June 2, 1995 appellant and her authorized representative appealed the May 4, 1995 decision of the Office of Workers' Compensation Programs, which denied her July 5, 1990 claim for compensation on the grounds that the evidence failed to establish that the incidents to which she attributed her stress condition were compensable and established factors of employment.¹

The issue presented on appeal is not medical in nature. It is an issue of law and fact, namely, whether any of the incidents implicated by appellant pertain to compensable factors of employment and, if so, whether the weight of the evidence of record establishes any such incidents as factual.

The Board has held that workers' compensation law does not cover each and every injury or illness that is somehow related to employment. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. The disability is not compensable, however, when it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.²

An employee's emotional reaction to an administrative or personnel matter is generally not covered. The Board has held, however, that error or abuse by the employing establishment

¹ Case No. A13-925050. In a decision dated June 14, 1995; the Office denied appellant's January 25, 1995 claim for compensation on the same grounds. Case No. 92137-13-1068096. Neither appellant nor her authorized representative appealed this decision to the Board.

² *Lillian Cutler*, 28 ECAB 125, at 129, 131 (1976).

in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.³ Perceptions alone are not sufficient to establish entitlement to compensation. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations with probative and reliable evidence.⁴

In this case, the Office found that the evidence failed to establish that any of the incidents to which appellant attributed her stress condition were compensable or established factors of employment. Most of the appellant's allegations concern harassment, which has not been established by the evidence of record, and administrative actions that have not been shown to be erroneous or abusive or unreasonable. The Board finds, however, that appellant has implicated a compensable factor of employment that is established by the evidence to be factual. In her report of January 10, 1991, Dr. Linda Altes, appellant's attending psychologist, explained that appellant's distress appeared to be directly related to her work responsibilities and duties, specifically, the duties she performed in management control reviews and internal audit, which required her to obtain sensitive material on fellow employees and their performance. Appellant, Dr. Altes reported, found this work to be extremely stressful. She explained that these assignments restimulated appellant's fear of what others think of her, her fear of reprisal, her need for approval, and the need to feel in control of her life and competent in her work. Dr. Altes further explained:

“When these fears were restimulated by her job assignments, she began to over-react to perceived slights, and to become depressed when she was rejected and her work was not appreciated. When depressed, she became suspicious of others and of their motives. These work conditions caused a reoccurrence and then exacerbation of [appellant's] depression. When she attempted to return to work, [appellant] found that she was again requested to perform the work of others, was given numerous tasks and responsibilities, was not given clerical support, and did not believe that she had the support of her supervisor. She soon felt overworked and overwhelmed. Although she was willing to try new behaviors to resolve work overload, conflicts, manage anger, and request help when necessary, these new coping strategies were found to be ineffective. She again felt powerless, she lost control of her anger and became inappropriately angry.”

Dr. Altes' report is supportive that appellant sustained an emotional reaction to her regular or specially assigned work duties or a requirement imposed by the employment. The Board therefore finds that appellant has implicated a compensable factor of employment that is established by the evidence to be factual.

In a decision dated May 4, 1995, the Office vacated the February 25, 1994 decision of the hearing representative on the grounds that the record failed to support the compensable factors found therein, and consequently there was no need to send the case to a referee medical examiner

³ *Margreate Lublin*, 44 ECAB 945 (1993).

⁴ *Ruthie M. Evans*, 41 ECAB 416 (1990).

to resolve an outstanding conflict in medical opinion. The Board's finding on appeal, that the record does support a compensable factor of employment, once again raises the issue of this outstanding conflict. Dr. Fred K. Berger, a Board-certified psychiatrist of professorial rank and the physician selected to resolve a prior conflict in medical opinion, reported on October 24, 1992 that he could find no evidence that appellant's condition was causally related to factors of federal employment. Appellant subsequently submitted a March 11, 1993 report from Dr. Paul U. Strauss, a Board-certified psychiatrist, supported that appellant's stress was causally related to her work. Appellant also submitted a July 16, 1993 report from Dr. Anna R. Ryan, a psychologist, who stated that her review of the documents on file provided conclusive evidence that appellant's depression was work related. Dr. Ryan appeared at the July 21, 1993 hearing and testified before the hearing representative. The hearing representative found that the opinions of Dr. Strauss and Dr. Ryan were of sufficient probative value to create a conflict with that of Dr. Berger, and the Board likewise finds such a conflict.

Section 8123(a) of the Federal Employees' Compensation Act provides in part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."⁵

To resolve the conflict in opinion between Dr. Strauss and Dr. Ryan, on the one hand, and Dr. Berger, on the other, the Office shall carefully prepare an appropriate statement of accepted facts, one that describes the duties implicated by appellant and related by Dr. Altes. The Office shall then refer appellant, together with the medical record and the statement of accepted facts, to an appropriate specialist for an opinion on whether the duties described in the statement of accepted facts caused or contributed to appellant's diagnosed condition. After such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's entitlement to compensation.

⁵ 5 U.S.C. § 8123(a).

The May 4, 1995 decision of the Office of Workers' Compensation Programs, finding no compensable and established factors of employment, is reversed and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
May 6, 1998

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member