

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PATRICIA A. ENGLISH and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, San Francisco, Calif.

*Docket No. 96-226; Submitted on the Record;  
Issued May 26, 1998*

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DECISION and ORDER

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

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

On November 18, 1994 appellant, then a 46-year-old decedent affairs details clerk, filed an occupational disease claim alleging that she sustained an emotional condition, which she attributed to factors of her federal employment. In written statements, appellant attributed her emotional condition to her reaction to an investigation by the employing establishment inspector general's (IG) office into an allegation that appellant was taking bribes from funeral homes in return for referrals from appellant.

In a report dated February 17, 1995, Dr. J. Richard Metz, a licensed psychologist, provided a history of appellant's condition and diagnosed an adjustment disorder. Dr. Metz attributed appellant's condition to stress caused by the investigation and to working with relatives of deceased persons when she herself had lost a family member.

In an undated statement received by the Office of Workers' Compensation Programs on March 31, 1995, appellant stated that the investigation began in October 1993, when an employing establishment IG investigator, Paul Lore, began investigating an allegation that appellant was taking bribes from funeral homes in return for referring customers to them. She stated that Mr. Lore asked her if she had taken large sums of money from the funeral homes, if Mr. Scott, a president of one funeral home, was sending her son to college and if she had taken any trips with Mr. Scott and stayed with him at a motel. Appellant denied that she had solicited business for any funeral home. She alleged that Mr. Lore kept trying to insinuate that she was having sexual relations with Mr. Scott for personal gain. Appellant stated that her union representative, Alex Peralta, interrupted Mr. Lore during one interview, telling him that he was becoming abusive and raising his voice and that Mr. Lore told him to "shut up." Appellant stated that Mr. Lore left the room for a few minutes, came back and slammed a folder down next to appellant and stated that he had affidavits from individuals saying appellant had forced them

into selecting a particular funeral home. She stated that Mr. Peralta asked to see the affidavits, but Mr. Lore refused to show them. Appellant stated that she became stressed over the false accusations and was shaking badly, but that she agreed to take a polygraph test at a later date. She told Mr. Lore that she would not grant him permission to review her bank accounts or telephone records, because she wanted to seek legal advice before agreeing to sign any papers. Appellant stated that Mr. Lore responded that he worked for the government and could access her records without her permission. She stated that about two or three months later she learned that the telephone records of her mother and sister, her mother's bank account, and a friend's bank account had been subpoenaed and that the employment histories of her mother and her friend had been investigated.

Appellant stated that her second interview with Mr. Lore did not take place until October 21, 1994, which was more than one year after the initial interview. She stated that she learned on October 20, 1994 that her estranged husband had died on October 18, 1994, but nevertheless reported for the meeting only to discover that the meeting had been canceled. Appellant stated that at the meeting on October 21, 1994 Mr. Lore asked her about some checks that she had signed and she explained that the checks were written to her mother to reimburse her for a loan and to a friend to pay his credit card bill.

She stated that another interview was held on November 18, 1994, at which Mr. Lore questioned her again about some bank checks, and that when union chief steward Leatha Childs asked Mr. Lore a question he threatened to "throw her out of the room." Appellant stated that a Federal Bureau of Investigation (FBI) agent was present in the event that appellant agreed to take a polygraph test, but that he would not administer the test as appellant indicated that she was taking medication. She stated that she was a nervous wreck, because of Mr. Lore's "harassing and abusive manner" and started wheezing<sup>1</sup> and trembling. Appellant responded to Mr. Lore's question about receiving telephone calls from medical administrative assistants after business hours by explaining that she allowed them to call her at home, because it was easier to take care of these matters at home instead of adding to her work load for the following day and that she had been allowing these calls for 10 years. She alleged that she was out of work from November 22, 1994 to February 6, 1995, because of the harassment from the investigation.

Appellant stated that in January 1995 she received a telephone call from Ms. Childs, notifying her that Mr. Lore had not found any evidence of wrongdoing and was going to recommend that the case be closed. Appellant stated that she had felt that the investigation would never stop and she described Mr. Lore's manner during the investigation as rude, disrespectful, and verbally abusive.

In a report dated May 17, 1995, Dr. Elyse Weinstein, a Board-certified psychiatrist, provided a history of appellant's condition, diagnosed major depression and stated that the situation which led her to seek psychiatric care, was harassment over an investigation at work. Dr. Weinstein stated that appellant described a "prolonged intolerable whittling away of her job pride and dignity."

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<sup>1</sup> Appellant indicated that she had asthma.

In a memorandum dated May 23, 1995, appellant's union president, Alicia Roca, and Ms. Childs stated that they had accompanied appellant to a meeting with Mr. Lore who had asked an FBI agent to attend in the event that appellant would agree to a polygraph test, but that appellant had not been advised that an FBI agent would be present. They stated that Mr. Lore asked appellant to explain some checks she had signed and she stated that the checks were written to her mother to repay her for a loan and that Mr. Lore did not believe appellant and "kept trying to badger" her into admitting that the money was given to her by funeral homes in return for referrals of business. Ms. Roca and Ms. Childs stated that Mr. Lore kept asking the same question "over and over again" and moved on to another question only after the officials noted that appellant had already answered the question. They stated that they asked Mr. Lore a question and he threatened to throw them out of the room.

Ms. Roca and Ms. Childs stated that Mr. Lore then asked appellant if she would take a polygraph test and they asked if the test would be valid considering appellant's emotional state as she was "visibly shaking and sweating profusely." Upon being asked if she was taking any medication, appellant replied that she had taken valium before coming to the meeting, at which point the FBI agent stated that he could not administer the test. Ms. Roca and Ms. Childs related that appellant was becoming increasingly agitated from Mr. Lore's "harassing and abusive" manner and confronted him about accusations he had made in his first meeting with appellant, insinuations that appellant was a "criminal and a whore" and was sleeping with Mr. Scott. They stated that appellant asked why, in the previous meeting, Mr. Lore had alleged that Mr. Scott was paying for her son's college education, when in fact, her son had not yet graduated from high school. Ms. Roca and Ms. Childs noted that Mr. Lore asked appellant why employees from funeral homes were telephoning her at home after business hours and appellant responded that when the funeral homes had a question after hours she allowed them to call her at home and that she would sometimes telephone nursing homes, coroners, or funeral homes after business hours if she felt the situation so warranted and that this had been her practice for the past 10 years. They stated that Mr. Lore then closed the meeting but that appellant was "angry, shaking and so stressed out that she became depressed."

Ms. Roca and Ms. Childs stated that appellant telephoned a few days later and asked for assistance in getting to the hospital, that she was referred to an outpatient crisis clinic by her physician and was off work for almost three months. They stated that Mr. Lore subsequently stated on several occasions that he could not find any evidence against appellant and that the investigation was really triggered by another employee's error.

In a letter dated May 24, 1995, Mr. Peralta stated that in August 1993 he had acted as appellant's union representative during an investigation and that the two investigators asked appellant "disturbing and misleading" questions and coerced appellant to comply with their requests. He stated that he protested the investigators' tactics, but was told to keep his mouth shut. Mr. Peralta stated that the situation created anxiety for appellant for the following year and "tremendously affected her job performance and personal life."

In a letter dated May 26, 1995, Mr. L. Kenneth Swasey, chief of medical administration for the employing establishment, stated that he concurred with appellant's description of the general events surrounding the investigation and that he witnessed her tearfulness and lack of

concentration and that she sounded under great strain and emotion when she telephoned the employing establishment to request sick leave. He noted that the investigation regarding appellant's dealings with the funeral homes occurred over the course of several years with several investigators participating and that the IG's office could not establish any wrongdoing by appellant despite "intensive efforts." He stated his opinion that the employing establishment put appellant through a very stressful experience, which put appellant and her life and family in a state of "limbo" and that appellant's stress condition worsened as the investigation "dragged on."

In a letter dated July 20, 1995, an assistant inspector general noted that appellant had requested the status of the investigation of her and that he advised her that the investigation had been closed. He provided her with a redacted version of the investigative report dated January 13, 1995.

The January 13, 1995 investigative report noted that the investigation into appellant's activities was initiated, because of a telephone call alleging that families of deceased veterans were being "steered" to a particular funeral home. The report noted that no evidence was found to suggest that appellant had engaged in steering business to a funeral home. The report also noted that, on January 9, 1994, the U.S. Attorney's office had been briefed concerning the investigation and had declined to prosecute appellant based on "the absence of substantive evidence of any criminal violations."

By decision dated August 4, 1995, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish that appellant had sustained an emotional condition causally related to compensable factors of employment.

The Board finds that this case is not in posture for decision.

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 an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially-assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>2</sup> 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>3</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 employment factors.<sup>4</sup> This burden includes the submission of a detailed

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>5</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>6</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>7</sup>

Appellant has alleged that she sustained an emotional condition, due to the employing establishment's investigation into allegations of bribery. She alleged that employing establishment investigator Mr. Lore was abusive to her during an investigation, which took place over the course of more than one year and she provided corroborating evidence in the form of witness statements. The Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regular or specially-assigned employment duties are not considered to be employment factors.<sup>8</sup> However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.

In an undated statement received by the Office on March 31, 1995, appellant stated that the investigation of her activities began in October 1993, when Mr. Lore began investigating an allegation that she was taking bribes from funeral homes in return for referring customers to them. She stated that Mr. Lore asked if she had taken large sums of money from the funeral homes; if Mr. Scott, a president of one funeral home, was sending her son to college; and if she had taken any trips with Mr. Scott and stayed with him at a motel. Appellant alleged that Mr. Lore kept trying to insinuate that she was having sexual relations with Mr. Scott for personal gain. Appellant stated that during one interview with Mr. Lore and her union representative, Mr. Peralta, told him that he was becoming abusive and raising his voice and that Mr. Lore told Mr. Peralta to "shut up." Appellant stated that Mr. Lore slammed a folder down next to her and stated that he had affidavits from individuals supporting the allegation of bribery, but when asked to produce these affidavits, Mr. Lore refused. She stated that about two or three months later she learned that the telephone records of her mother and sister, her mother's bank account and a friend's bank account had been subpoenaed and that the employment histories of her mother and her friend had been investigated.

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<sup>5</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>6</sup> See *Margaret Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>7</sup> *Id.*

<sup>8</sup> *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

Appellant stated that her second interview with Mr. Lore did not take place until one year later on October 21, 1994. She stated that another interview was held on November 18, 1994 and that Mr. Lore questioned her again about some bank checks and that when union chief steward Ms. Childs asked Mr. Lore a question he threatened to “throw her out of the room.” Appellant stated that she was a nervous wreck because of Mr. Lore’s “harassing and abusive manner” and started wheezing and trembling. She alleged that she was out of work from November 22, 1994 to February 6, 1995 because of the harassment from the investigation.

In a memorandum dated May 23, 1995, appellant’s union president, Alicia Roca, and Ms. Childs stated that they had attended a meeting with appellant and Mr. Lore. They stated that Mr. Lore did not believe appellant’s explanation, for the purpose of some checks which she had written to her mother and a friend, and that Mr. Lore “kept trying to badger” her into admitting that the money was given to her by funeral homes. Ms. Roca and Ms. Childs stated that Mr. Lore asked the same question “over and over again” and moved to another question only after the officials noted that appellant had already answered the question. They stated that they asked Mr. Lore a question and he threatened to throw them out of the room. Ms. Roca and Ms. Childs stated that appellant was becoming increasingly agitated from Mr. Lore’s “harassing and abusive” manner and confronted him about accusations he had made in his first meeting with appellant that she was sleeping with the president of one of the funeral homes. They related that appellant also asked why Mr. Lore had alleged that the funeral home president was paying for her son’s college education, when in fact, her son had not yet graduated from high school. Ms. Roca and Ms. Childs stated that when Mr. Lore closed the meeting appellant was “angry, shaking, and so stressed out that she became depressed.”

In a letter dated May 24, 1995, Mr. Peralta stated that in August 1993 he had acted as appellant’s union representative and that the two investigators asked appellant “disturbing and misleading” questions and coerced appellant to comply with their requests. He stated that he protested the investigators’ tactics, but was told to keep his mouth shut. Mr. Peralta stated that the situation created anxiety for appellant during the following year.

In a letter dated May 26, 1995, Mr. Swasey, chief of medical administration for the employing establishment, stated that he concurred with appellant’s description of the general events surrounding the investigation and that he witnessed her tearfulness and lack of concentration. He noted that the investigation regarding appellant’s dealing with the funeral homes occurred over a long period of time with several investigators participating and that the IG’s office could not establish any wrongdoing by appellant despite “intensive efforts.” In a letter dated July 20, 1995, an assistant inspector general noted that appellant had requested the status of the investigation of her and that he advised her that the investigation had been closed. He provided her with a redacted version of the investigative report dated January 13, 1995, which stated that no evidence was found to suggest that appellant had engaged in steering business to a funeral home.

The January 13, 1995 investigative report noted, that the investigation into appellant’s activities was initiated, because of a telephone call alleging that families of deceased veterans were being “steered” to a particular funeral home. The report noted that no evidence was found to suggest that appellant had engaged in steering business to a funeral home. The report also

noted that the U.S. Attorney's office had been briefed concerning the investigation and had declined to prosecute appellant based on the absence of substantive evidence of any criminal violations.

Considering all of the evidence of record, the Board finds that there is sufficient evidence of record to establish administrative abuse in the investigation of appellant and, therefore, appellant has established a compensable factor of employment. It appears the investigation in this matter was continued even after the U.S. Attorney's Office declined to prosecute in this matter based on the absence of substantive evidence of any criminal violations.

Accordingly, this case is remanded for preparation of a statement of accepted facts and further development of the medical evidence to determine whether appellant sustained any medical condition causally related to the employing establishment's abusive handling of its investigation of appellant.

The August 4, 1995 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

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

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Michael E. Groom  
Alternate Member