

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHELL A. STEWART and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, San Francisco, Calif.

*Docket No. 96-1581; Submitted on the Record;
Issued May 19, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On September 30, 1995 appellant, then a 27-year-old secretary, filed a notice of occupational disease, claiming that her manic depression resulted from her employment. Appellant explained that she was hospitalized on July 24, 1995 after attempting suicide and realized while undergoing therapy that her mental condition was related to her job. An October 2, 1995 letter from Jarret S. Boone, PhD., stated that appellant had a severe, job-related, stress disorder that warranted her continued leave from work. Dr. Boone diagnosed bipolar affective disorder.

In response to a request from the Office of Workers' Compensation Programs for more information, appellant submitted a handwritten statement describing the work factors she believed contributed to her emotional condition—accusations by a supervisor that she was sexually harassing him, her transfer to another office where coworkers were “mean” and picked on her, an “unfair” performance appraisal despite her hard work, and management’s refusal to transfer her back to her former position. Appellant stated that she could not sleep and arrived at work late or called in sick, that she did not care about anything, and that she thought about killing her supervisor, who had turned her life upside down.

Also in the record is a statement signed by appellant but handwritten by an unknown person. This document described appellant’s interaction with her supervisor: she accepted rides to her car from him but rejected his request for dates; they watched a football game in a bar once and had lunch, all in the company of other coworkers; the supervisor spread rumors that she was sleeping with him and “throwing herself” at him; and the supervisor blocked her from returning to her former office.

In a letter dated February 20, 1996, Dr. Boone released appellant for work but stated that proximity to the supervisor would compromise her mental condition and that she should not be sent to the Oakland office where he was located because his role in appellant's decompensation was key. By letter dated March 1, 1996, the employing establishment informed Dr. Boone that appellant's position had been reassigned to the Oakland office, along with other employees. On March 4, 1996 appellant resigned.

On March 25, 1996 the Office denied the claim on the grounds that the evidence failed to establish that appellant sustained a diagnosed medical condition arising out of the performance of duty. The Office found that none of the incidents and factors cited by appellant constituted compensable factors of employment.

The Board finds that appellant has failed to meet her burden of establishing that she sustained an emotional condition in the performance of duty.

Under the Federal Employees' Compensation Act,¹ 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. To establish 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.²

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.³ There are distinctions regarding the type of situation giving rise to an emotional condition which will be covered under the Act.

For example, disability resulting from an employee's emotional reaction to his or her regular or specially-assigned duties or to a requirement imposed by the employing establishment is covered.⁴ However, an employee's emotional reaction to an administrative or personnel matter is generally not covered,⁵ and disabling conditions caused by an employee's fear of termination or frustration from lack of promotion are not compensable. In such cases, the employee's feelings are self-generated in that they are not related to assigned duties.

Nonetheless, if the evidence demonstrates that the employing establishment erred or acted abusively or unreasonably in the administration of a personnel matter, any physical or

¹ 5 U.S.C. §§ 8101-8193 (1974).

² *Vaile F. Walders*, 46 ECAB 822, 825 (1995).

³ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁴ *Jose L. Gonzalez-Garced*, 46 ECAB 559, 563 (1995).

⁵ *Sharon J. McIntosh*, 47 ECAB ____ (Docket No. 94-1777, issued August 28, 1996).

emotional condition arising in reaction to such error or abuse may be covered.⁶ However, a claimant must support her allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.⁷

The initial question is whether appellant has alleged compensable employment factors as contributing to her condition;⁸ if appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.⁹

In this case, the Board finds that appellant has identified no compensable work factors and that the employing establishment has neither erred nor acted abusively or unreasonably in the administration of personnel matters.

Appellant alleges that her supervisor spread rumors about her sexual "harassment" of him but provided no specific details or corroborating evidence to support this allegation. Appellant described a personal situation in which she accepted rides to her car but provided no evidence that her regular or specially-assigned duties played any part in her interaction with her supervisor.¹⁰

Appellant alleged that her performance evaluation was lowered despite her hard work, but an unsatisfactory performance rating, without more, is not covered under the Act.¹¹ Although performance appraisals are generally related to employment, job assessment is an administrative function of the employer, and an employee's emotional reaction to a poor rating is a self-generated feeling not covered under the Act. Here, appellant complained that the lower rating was unfair, but admitted that she habitually arrived at work late, and provided no evidence of error or abuse on the part of the employing establishment in assessing her performance.¹²

Finally, appellant alleged that the coworkers at a branch office to which she was transferred talked about her behind her back and gave her a hard time. Appellant also stated that her request to be transferred back to the San Francisco office was blocked by her supervisor. However, the record reveals that all the employees in appellant's division were reassigned to

⁶ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

⁷ *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

⁸ *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

⁹ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992) (noting that if appellant fails to substantiate with probative and reliable evidence a compensable factor of employment, the medical evidence need not be discussed).

¹⁰ See *Sandra F. Powell*, 45 ECAB 877, 886 (1994) (finding that an employee's mere perception of harassment or discrimination was not compensable); *Chester R. Henderson*, 42 ECAB 352, 359 (1991) (finding that appellant's allegation of harassment, without any witness' statement in support, was insufficient to establish that actual harassment had occurred).

¹¹ *O. Paul Gregg*, 46 ECAB 624, 636 (1995).

¹² See *Helen Casillas*, 46 ECAB 1044, 1052 (1995) (finding that evaluation of appellant's performance and observation of her mail route deliveries do not give rise to a compensable disability absent a finding of error or abuse in these administrative matters).

another office by the time she was released to return to work.¹³ Moreover, appellant again provided no evidence beyond her bare allegations that she was harassed by coworkers and that her supervisor blocked her transfer.¹⁴

While appellant believed that her attempted suicide resulted from her frustration with her job, the mere manifestation of an emotional condition during a period of employment does not establish that the mental problem is work related.¹⁵ Inasmuch as appellant has failed to meet her burden of proof in providing factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition, the Board finds that the Office properly denied her claim.¹⁶

The March 25, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
May 19, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹³ *James D. Carter, Jr.*, 43 ECAB 113, 124 (1991); see *Donald W. Bottles*, 40 ECAB 349, 353 (1988) (finding that an employee's frustration and depression resulting from an involuntary transfer are not compensable).

¹⁴ See *Daniel B. Arroyo*, 48 ECAB ____ (Docket No. 95-62, issued November 22, 1996) (finding that while verbal altercations and a tense relationship with a supervisor may be compensable work factors if proven, appellant failed to support his allegations with probative evidence).

¹⁵ See *Mary A. Sisneros*, 46 ECAB 155, 162 (1994) (finding that appellant's perceptions of an unsympathetic atmosphere in the workplace were largely self-generated and thus not covered under the Act).

¹⁶ See *Raul Campbell*, 45 ECAB 869, 877 (1994) (finding that appellant failed to substantiate compensable factors of employment or allegations of error or abuse on the part of the employing establishment).