

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PALESTRINA L. PATTERSON and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, San Jose, Calif.

*Docket No. 97-101; Submitted on the Record;
Issued October 19, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof in establishing that her emotional condition was caused by work factors.

On October 31, 1995 appellant, then a 40-year-old revenue officer, filed a notice of occupational illness, claiming that repeated harassment and discrimination at work that was ignored by management resulted in her being hospitalized for depression, anxiety, and stress. Appellant submitted a detailed statement describing incidents at work since 1988 and a November 1, 1995 report from Dr. Roger L. Kelley, a licensed clinical psychologist.¹

On June 21, 1996 the Office denied the claim on the grounds that the events as described by appellant as having caused her emotional condition did not occur within the performance of duty. The Office noted that even if these events were within the performance of duty, the medical evidence failed to establish a causal relationship between the events and appellant's emotional condition.

Appellant timely requested reconsideration and submitted a May 29, 1996 report from Dr. Antoinette Acenas, a Board-certified psychiatrist.² On August 12, 1996 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant review of its prior decision.

¹ Dr. Kelley provisionally diagnosed chronic adjustment disorder and alcohol dependence as well as an alcohol-induced psychotic disorder. He stated that appellant was totally disabled for work and added that the likelihood that her symptoms of depression and thought disorder were related to alcohol consumption was very real given her history of alcohol abuse since 1991.

² Dr. Acenas diagnosed major depression with psychotic features and stated that appellant's symptoms prevented her from performing her regular job functions. Appellant was hospitalized on August 29, 1995 as a danger to herself after she threatened suicide.

Under the Federal Employees' Compensation Act,³ 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.⁴

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.⁵ There are distinctions regarding the type of work 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.⁶ However, an employee's emotional reaction to an administrative or personnel matter is generally not covered,⁷ 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.⁸

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 emotional condition arising in reaction to such error or abuse may be covered.⁹ However, a claimant must support her allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.¹⁰

The initial question is whether appellant has alleged compensable employment factors as contributing to her condition.¹¹ Thus, part of appellant's burden of proof includes the submission of a detailed description of the specific employment factors or incidents which appellant believes caused or adversely affected the condition for which she claims

³ 5 U.S.C. §§ 8101-8193 (1974).

⁴ *Vaile F. Walders*, 46 ECAB 822, 825 (1995).

⁵ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁶ *Jose L. Gonzalez-Garced*, 46 ECAB 559, 563 (1995).

⁷ *Sharon J. McIntosh*, 47 ECAB ____ (Docket No. 94-1777, issued August 28, 1996).

⁸ *Barbara E. Hamm*, 45 ECAB 843, 850 (1994).

⁹ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

¹⁰ *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

¹¹ *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

compensation.¹² If appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.¹³

In this case, the Board finds that appellant has identified no compensable work factors that are substantiated by the record and has failed to establish that the employing establishment either erred or acted abusively or unreasonably in the administration of personnel matters. The record reveals that appellant has made numerous allegations of discrimination and harassment by her supervisors and coworkers in regard to her training period as a revenue officer in 1988, an Equal Employment Opportunity (EEO) complaint and grievance filed against a manager in 1990, an alleged assault by an obese taxpayer in April 1990 and the death of her father that same year, two altercations with another employee in 1991 and June 1995, her performance appraisal and a manager's counseling about her work product on Flexiplace, and other personnel actions involving an investigation into the 1995 incident, but has provided no corroborating evidence to support her contentions.

According to the employing establishment, appellant was provided the same opportunities as other revenue officer trainees. When she filed an EEO complaint about her evaluation, she was transferred to another office and assigned a different training coach. Her EEO complaint against another manager was dropped for lack of evidence supporting her allegations of sexual harassment. Appellant's charge that management refused to pay her for completing above-grade work was handled by the 1994 cash award made to her as part of a union settlement for similarly-situated revenue officers.

The alleged assault was not supported by any evidence; appellant's supervisor noted that she had failed to follow office procedures in carrying out seizures of personal property on that same day. While appellant's supervisor did suggest that she take a writing course to improve her skills, and recommended that she cooperate with investigators regarding the June 1995 altercation with a coworker, there is no evidence that the supervisor erred or acted unreasonably in these actions. Nor is there any evidence, beyond her own perceptions, that appellant was mistreated at work by any other supervisors or coworkers.¹⁴ Therefore, the Board finds that appellant has failed to show any error or abuse on the part of the employing establishment.¹⁵

¹² *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

¹³ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

¹⁴ See *Sharon J. McIntosh*, 47 ECAB ____ (Docket No. 94-1777, issued August 28, 1996) (finding that an employee's reactions to administrative actions are not compensable unless the evidence demonstrates error or abuse on the part of the employing establishment in its administrative capacity).

¹⁵ See *Alberta Kinloch-Wright*, 48 ECAB ____ (Docket No. 95-1254, issued April 23, 1997) (finding that appellant's own perceptions of harassment and hostility from her supervisor were neither specific nor independently corroborated and were therefore not compensable under the Act; *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 mere allegation of harassment, without any witness' statement in support, was insufficient to establish that actual harassment had occurred).

While appellant claimed generally that her stress resulted from supervisory harassment at work, she has not alleged that a reaction to specific regular or specially assigned duties, such as reviewing cases or conducting field investigations, caused or aggravated her diagnosed emotional condition.¹⁶ None of the evidence submitted on reconsideration supports appellant's allegations that any of the events and incidents she described actually occurred; nor did this evidence demonstrate that the established events and incidents occurred in the performance of duty. Therefore, the Board finds that appellant has not established any compensable work factors under the Act and thus need not consider the medical evidence.¹⁷

The August 12 and June 21, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

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

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

¹⁶ See *Merriett J. Kauffman*, 45 ECAB 696, 703 (1994)(finding that appellant failed to allege or establish that specific work tasks or requirements assigned to him gave rise to his emotional condition).

¹⁷ See *Dinna M. Ramirez*, 48 ECAB ____ (Docket No. 94-2062, issued January 17, 1997) (finding that the Board need not consider psychiatric evidence because appellant failed to establish that the employing establishment acted abusively in denying her request for official time).