

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA J. PERRY and DEPARTMENT OF THE ARMY,
LAKE CITY ARMY AMMUNITION PLANT, OFFICE OF THE
COMMANDER, Independence, Mo.

*Docket No. 96-2653; Submitted on the Record;
Issued September 16, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained an emotional condition, asthma, bronchial spasms, or other respiratory condition in the performance of duty as alleged.

On January 13, 1995 appellant, then a 56-year-old secretary, filed a claim alleging that she sustained an asthma attack on January 12, 1995 when she was exposed to cold, damp air while walking to a mandatory training session. Appellant had intermittent absences from work from January 12 to May 4, 1995, which she attributed to this asthma attack. On June 5, 1995 appellant filed a notice of occupational disease alleging that she sustained asthma and bronchial spasms due to emotional stress at work.

In support of her claim, appellant submitted medical evidence. In a February 26, 1995 note, Dr. David Voshall, an attending Board-certified internist, permanently restricted appellant from exposure to "cold air" as she developed bronchospasms when so exposed. In a May 15, 1995 report, Dr. Voshall noted treating appellant for "multiple medical problems," including asthma. He stated that appellant had "shown a clear connection between exacerbation of her asthma and stress and pressures at work and [he] fe[lt] that the two [were] related." Dr. Voshall submitted work absence slips for the dates January 13 to February 1, 14 to 16, April 19 to 24 and May 8 to 12, 15 to 16, 1995.¹

In an August 8, 1995 statement, appellant described an alleged pattern of harassment and prejudicial treatment by the employing establishment, which she felt caused emotional stress which precipitated respiratory problems. She was diagnosed with asthma in 1989 with one or two attacks per year until July 1993, when Lt. Col. Mary Goodwin arrived. Appellant stated that

¹ In a July 24, 1995 letter, the Office of Workers' Compensation Programs advised appellant of the type of additional medical and factual evidence needed to support her claim.

harassment was the sole cause of her emotional stress and not her assigned job duties. Appellant alleged that there was a conspiracy to replace her with another worker named Marlene, and that she was afraid of losing her job due to a reduction-in-force (RIF). Appellant attributed an October 1993 hospitalization for asthma attack and a severe exacerbation of asthma symptoms from December 23, 1994 to May 1995 to emotional stress caused by employing establishment harassment. She alleged a March 1994 incident, in which she reported irregularities and possible fraud in a coworker's timecard to a security officer, and was then told by Lt. Col. Goodwin that she would be sorry for having filed a report and causing her trouble and did a "15-6" investigation of appellant in retaliation. Appellant also alleged stress due to employing establishment harassment regarding an occupational back injury in August 1994. She described as stressful an August 1994 incident, in which she was given only one hour of compensatory time to type a 68-page handwritten report one-and-a-half days prior to a planned vacation, completed typing the report at home in order to hand it in on time, later learned that the report was not due for two months and was reprimanded for working at home. Appellant alleged that a September 1994 letter of reprimand regarding nonprocessing of two travel orders caused extreme stress. She alleged that she was not given a monetary award for taking on administrative duties for an October 1994 commander's conference as retaliation for having filed an Equal Employment Opportunity (EEO) complaint. Appellant attributed a January 12, 1995 asthma attack to being made to walk to a training session in damp weather. Appellant also attributed her condition to receiving a February 1995 performance rating which she felt was unfairly low. She also alleged disputes over leave usage when she used annual leave for a hair appointment and another occasion when she used annual leave contiguously with her lunch break. Appellant was then told by Lt. Col. Goodwin that all annual leave requests must be made at least 48 hours in advance, whereas appellant asserted that "regulations" only required 24 hours notice. Appellant also alleged that she was harassed for making personal phone calls at work, while coworkers were able to make lengthy personal calls and never reprimanded.

In an August 21, 1995 letter, the employing establishment described appellant's clerical duties, denied that her supervisor wanted to replace appellant and noted that there were no staffing shortages during the previous two years that would affect appellant's work load. The employing establishment did not address appellant's other allegations due to her pending EEO complaints.

By decision dated September 26, 1995, the Office denied appellant's claims, finding that she had failed to establish that her claimed respiratory condition was sustained in the performance of duty. The Office found that appellant failed to provide sufficient rationalized medical evidence to establish that walking to the meeting on January 12, 1995 caused any medical condition. The Office further found that use of leave, fear of losing her job due to the August 1994 back injury or RIF, the November 1993 letter of reprimand, failure to receive a monetary award for performing duties for a commander's conference and a February 1995 performance rating, were not incidents occurring within the scope of appellant's federal employment. The Office also found that appellant had not substantiated that she was given insufficient time to complete typing the 68-page handwritten report. The Office concluded that appellant failed to allege any compensable factors of employment. Appellant disagreed with this decision and requested an oral hearing, held May 6, 1996.

At the hearing, appellant alleged that while hospitalized in October 1993 after a severe asthma attack, an employing establishment official approached her and asked her to retire. Appellant stated that the employing establishment wanted her to retire in order to place a secretary named Marlene in her position. Appellant noted that the employing establishment was having difficulty in placing workers during a RIF. She noted that two days following her return to work in November 1993 after using five weeks of sick leave, Lt. Col. Goodwin issued her a letter of reprimand for deficient job performance, although she received a “very successful” performance rating in September 1993. Appellant alleged that this reprimand caused her extreme stress. Appellant noted that after Lt. Col. Goodwin was reassigned in May 1995, her asthma symptoms abated. At the conclusion of the hearing, the Office hearing representative advised appellant of the deficiencies in the medical evidence of record and left the record open for 30 days to allow appellant to submit additional medical evidence. The record indicates that appellant did not submit additional evidence which was received prior to July 3, 1996.

By decision dated July 3 and finalized July 8, 1996, the Office hearing representative affirmed the Office’s September 26, 1995 decision denying appellant’s claim. The hearing representative found that appellant failed to provide any corroborating evidence to substantiate her claims of harassment, or that the alleged incidents in fact occurred. The hearing representative further found that the only medical evidence of record was the May 15, 1995 report from Dr. Voshall, which did not contain an accurate history of injury, discuss appellant’s specific allegations, or contain medical rationale explaining how and why factors of appellant’s federal employment would cause or exacerbate any medical condition.

The Board finds that appellant has not established that she sustained an emotional condition, asthma, bronchial spasms or other respiratory condition in the performance of duty.

As appellant predicated her claim of bronchial spasms, asthma or other respiratory condition on work-related stress, the Board will first address the issue of whether or not appellant has established her claim for an emotional condition.

To establish appellant’s occupational disease claim that she has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her conditions; (2) rationalized 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 Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of

² See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

the relationship between the diagnosed condition and the specific employment factors identified by appellant.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. When an employee experiences an emotional reaction to his or her regular or specially assigned work duties or to a requirement imposed by the employment, or has fear and anxiety regarding his or her ability to carry out his or her duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment and comes within the scope of coverage of the Federal Employees' Compensation Act. On the other hand, where the disability results from an employee's emotional reaction to employment matters but such matters are not related to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.⁴ Disabling conditions resulting from an employee's feeling of job insecurity, such as fear of a RIF, or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.⁵

When working conditions are alleged as factors in causing 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.⁶ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁷

In the present case, the Office made specific findings on each of the factors appellant implicated.

Regarding appellant's allegations that she was unfairly denied leave or reprimanded concerning her use of annual leave, alleged unfairness in leave request evaluations and leave denials are not compensable work factors where appellant offered no independent evidence that the employing establishment erred or acted abusively in these matters.⁸ In this case, appellant

³ *Id.*

⁴ *Donna Faye Cardwell*, *supra* note 2; *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Raymond S. Cordova*, 32 ECAB 1005 (1981); *Lillian Cutler*, *supra* note 4.

⁶ *See Barbara Bush*, 38 ECAB 710 (1987).

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

⁸ *Michael Thomas Plante*, 44 ECAB 510 (1993).

has not offered evidence corroborating her account of Lt. Col. Goodwin's actions regarding her use of leave.

Regarding the reprimands appellant received in November 1993 and September 1994 the Office found that disciplinary actions are not considered to be in the performance of duty.⁹ The Board has held that these disciplinary actions relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.¹⁰ Although the handling of disciplinary actions, evaluations and other similar actions are generally related to the employment, they are administrative functions of the employer and not the duties of the employee.¹¹ 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 determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹² Appellant has not submitted sufficient evidence in corroboration of her claim to establish that the employing agency erred or acted abusively with regard to the reprimands. Thus, appellant has not established a compensable employment factor under the Act in this respect.¹³

Regarding appellant's February 1995 performance evaluation and the employing establishment's decision not to grant appellant a monetary award for assisting with an October 1994 conference, this evaluation was an administrative function of the employer and not the duty of appellant. Lacking evidence of error or abuse on the part of the employer, such functions did not constitute factors of employment. The Board has held that reactions to assessments of performance are not covered by the Act.¹⁴

Regarding appellant's fear of losing her job due to a RIF, replacement by another secretary, or due to her August 1994 injury, the Board has held that such feelings of job insecurity are not compensable factors of employment under the Act and are self-generated perceptions.¹⁵

Regarding appellant's allegation that she was given insufficient time to type a report in August 1994, appellant failed to submit corroborating evidence. The Board has considered the

⁹ See *Larry D. Passalacqua*, 32 ECAB 1859 (1981).

¹⁰ See *Jimmy Gilbreath*, 44 ECAB 555 (1993).

¹¹ *Id.*

¹² See *Richard Dube*, 42 ECAB 916 (1991).

¹³ See *Frederick D. Richardson*, 45 ECAB 454 (1994).

¹⁴ *Michael Thomas Plante*, 44 ECAB 510 (1993); *Effie O. Morris*, 44 ECAB 470 (1993).

¹⁵ *Raymond S. Cordova*, 32 ECAB 1005 (1981); *Lillian Cutler*, *supra* note 4.

lack of corroboration and concluded that appellant has submitted insufficient evidence to sustain her allegations of events.¹⁶

Appellant has also alleged a pattern of harassment from the employing establishment, in particular, Lt. Col. Goodwin. In order to establish compensability under the Act, however, there must be evidence that harassment did in fact occur. The Board notes that unfounded perceptions of harassment do not constitute an employment factor and that mere perceptions are not compensable under the Act.¹⁷ In the present case, appellant has not submitted sufficient evidence to support the alleged incidents of harassment. Accordingly, the Board finds that appellant has failed to substantiate her claims of harassment.

Although appellant alleged that she suffered an emotional condition due to harassment at work, she failed to provide reliable, probative and substantial evidence that such harassment did, in fact, occur. Therefore, she failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty. As appellant predicated her claim of respiratory conditions on a work-related stress condition, she has also failed to establish that these respiratory conditions were related to factors of her federal employment.¹⁸

The decision of the Office of Workers' Compensation Programs dated July 3 and finalized July 8, 1996 is hereby affirmed.

Dated, Washington, D.C.
September 16, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

¹⁶ See *Lorraine E. Schroeder*, 44 ECAB 323 (1992); *Mary N. Kolis*, 25 ECAB 53 (1973).

¹⁷ *Kathleen D. Walker*, 42 ECAB 603 (1991).

¹⁸ The Board notes that appellant initially alleged in her January 13, 1995 claim form that she sustained an asthma attack on January 12, 1995 due to exposure to cold, damp air while walking to a mandatory training session. Although appellant later retracted this allegation in her June 5, 1995 claim form the Board notes that appellant did not submit sufficient rationalized medical evidence to establish a causal relationship between exposure to damp air and a respiratory condition. *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

Bradley T. Knott
Alternate Member