

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHIRLEY E. MACON and DEPARTMENT OF LABOR,  
BUREAU OF LABOR STATISTICS, Philadelphia, Pa.

*Docket No. 97-1220; Submitted on the Record;  
Issued April 1, 1999*

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DECISION and ORDER

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

The issue is whether appellant has met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On September 23, 1994 appellant, then a 50-year-old economist, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she experienced hypertension and an anxiety disorder causally related to factors of her federal employment.

In statements accompanying her claim, appellant primarily attributed her emotional condition to the following: being placed on a performance improvement program (PIP); harassment by Maureen Greene, her supervisor; poor management of the PIP by Ms. Greene, inadequate training and not having labstat on her computer.

By decision dated March 31, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she did not establish an injury in the performance of duty. The Office found that appellant had not alleged any compensable employment factors. In merit decisions dated May 8 and November 21, 1996, the Office denied modification of its prior decision.

The Board has duly reviewed the case record and finds that appellant has not established that she sustained an emotional condition in the performance of duty.

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 illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>1</sup> Disability is not

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.<sup>2</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>3</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates the 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>4</sup>

Appellant attributed her emotional condition, in part, to harassment by her supervisor, Ms. Greene. Appellant related that on May 17, 1994 Ms. Greene told her that she had to stay in the economic analysis and information division because no other group wanted her. Appellant further stated that on May 9, 1994 Ms. Greene removed unfinished work from her desk and then criticized the work because it was incomplete. Appellant additionally stated that Ms. Greene once told her that she did not care what appellant did, called her confused and told her coworkers not to respond to her questions.

With regard to allegations of harassment by her supervisor, the Board notes that to the extent that disputes and incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.<sup>5</sup> However, for harassment to give rise to a compensation factor of employment, there must be evidence that the implicated acts did, in fact, occur as alleged. Mere perceptions of harassment are not compensation under the Act.<sup>6</sup> In the instant case, Ms. Greene stated that appellant arrived in the economic analysis and information division in 1993 as a result of failing to satisfactorily complete a PIP in another division, and that she told appellant that she had nowhere else to go in an attempt to get her to concentrate on her work. Ms. Greene further stated that in 1993 she removed an unfinished release from appellant's desk after she was given excessive time to complete the task and that she told appellant not to seek advice from coworkers so that she could assist her in learning the process. She also stated that she once told appellant that she was confused regarding how much leave to take for lunch. While appellant alleged that her supervisor made statements and took action which she believed

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<sup>2</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

<sup>4</sup> *Id.*

<sup>5</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>6</sup> *Ruth C. Borden*, 43 ECAB 146 (1991).

constituted harassment, she has provided insufficient evidence to support her allegations.<sup>7</sup> Thus, appellant has not established a compensable employment factor under the Act.

Appellant also attributed her increased blood pressure and anxiety to the employing establishment placing her on a PIP and denying her a within-grade increase after she failed to acceptably complete the PIP. The employing establishment's imposition of a PIP and denial of appellant's within-grade increase relate to administrative or personnel matters which, although generally are related to employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee.<sup>8</sup> Unless there is evidence of error or abuse in the administration of a personnel matter, coverage will not be afforded.<sup>9</sup> In this case, appellant has submitted no evidence which would establish error or abuse regarding these administrative and personnel functions.

Appellant further maintained that she experienced stress due to Ms. Greene's poor management of the PIP. Appellant stated that Ms. Greene was not available for questions, in part because she was on maternity leave for part of the PIP, and did not provide her enough time to improve. Appellant further indicated that Ms. Greene required her to spend two hours in her office each day completing exercises. An employee's complaints concerning the manner in which a supervisor performs her duties as a supervisor or the manner in which a supervisor exercises her supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act, absent evidence that the supervisor acted unreasonably in the administration of a personnel matter.<sup>10</sup> Ms. Greene, in response to appellant's contentions, related that she was very available for communication with appellant, and at one point had her work in her office for a few hours each day so that she would be available for any questions. Ms. Greene also stated that she extended the duration of the PIP in order to give appellant more time to reach an acceptable level of performance. Appellant did not submit any evidence to substantiate that her supervisor acted unreasonably in the performance of her duties and thus appellant has not met her burden of proof to establish a compensation factor of employment.

Appellant also alleged that Ms. Greene improperly required her to perform secretarial tasks in addition to her PIP duties. Appellant's supervisor noted that a PIP did not relieve an employee of all other duties. She further indicated that appellant protested the removal of clerical work when she instructed her to spend all of her time on the PIP. Appellant, thus, has not established her allegation as factual.

Regarding appellant's allegation that she received inadequate training during the PIP and on certain computer programs, the Board has held that an employing establishment's refusal to give an employee training as requested is an administrative matter, which is not covered under

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<sup>7</sup> *William P. George*, 43 ECAB 1159 (1992).

<sup>8</sup> *Michael Thomas Plante*, 44 ECAB 510 (1993).

<sup>9</sup> *Id.*

<sup>10</sup> *Abe E. Scott*, 45 ECAB 164 (1993).

the Act unless the refusal constitutes error or abuse.<sup>11</sup> In the instant case, Ms. Greene related that appellant received adequate training for her position. Appellant has not submitted any evidence which would establish error or abuse on behalf of the employing establishment in failing to grant her request for additional training.

Appellant also maintained that not having labstat on her computer delayed her attempts to complete customer requests and increased her anxiety. In response, Ms. Greene stated that appellant had little need for labstat, a database of statistics from the Bureau of Labor Statistics. She related that traditionally requests from the public requiring labstat were saved up for the week and that the employees then accessed the database cooperatively. Ms. Greene further stated that while on the PIP appellant's need for labstat was "insignificant." Appellant, thus, has not established a compensable factor of employment.

Appellant next attributed her stress to the imposition of deadlines for completing her PIP assignments. In *Georgia F. Kennedy*,<sup>12</sup> the Board, citing the principles of *Cutler*, listed employment factors which would be covered under the Act, including an unusually heavy work load and imposition of unreasonable deadlines. In the instant case, Ms. Greene stated that she provided appellant more time than any other employee, including students, to perform assigned tasks, including those she received on the PIP. Appellant has submitted no evidence to support her allegation that she was given unreasonable deadlines to complete her assignments and, therefore, this allegation cannot be deemed a compensable factor of employment.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act, and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.<sup>13</sup>

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<sup>11</sup> *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

<sup>12</sup> 34 ECAB 608 (1983).

<sup>13</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, *supra* note 3.

The decisions of the Office of Workers' Compensation Programs dated November 21 and May 8, 1996 are hereby affirmed.

Dated, Washington, D.C.  
April 1, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Michael E. Groom  
Alternate Member