

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOROTHY E. WITT and U.S. DEPARTMENT OF JUSTICE,
DRUG ENFORCEMENT AGENCY, Fort Worth, TX

*Docket No. 98-737; Submitted on the Record;
Issued December 13, 1999*

DECISION and ORDER

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

The issue presented on appeal is whether appellant has established that she sustained an injury in the performance of duty.

On February 13, 1996 appellant, then a 53-year-old secretary, filed a notice of occupational disease and claim for compensation alleging that she sustained a nervous condition as result of a stressful work environment.

In a statement dated March 27, 1996, appellant's supervisor, Kenneth R. Bloemaker, stated that appellant was hired as a secretary on September 5, 1995 with the employing establishment for a probationary period. He indicated that in early December 1996, he began to receive complaints from other members of the office staff that appellant was making errors in proofreading, correspondence formatting, document distribution and time and attendance reports. He stated that he moved appellant to a work station immediately adjacent to other more experienced secretarial staff so that she could have more continuous assistance to improve her performance. He advised that on December 29, 1996 appellant was informed that she was not making the expected progress and that it was felt that she was resisting direction from the secretarial staff. He stated that appellant was given 30 days to improve her performance or she would be dismissed for unsatisfactory performance. According to Mr. Bloemaker, appellant became ill at work on January 5, 1996 and it was obvious to all individuals in her group that she was under considerable stress. He acknowledged that appellant had a personality conflict with one individual during her training, but noted that there were still substantive problems with her work performance during that time frame.

In a typed statement accompanying her CA-2 claim form, appellant stated that in late October 1995 she began having pain in her chest and back. She related that on January 5, 1996 she was taken out of her workplace by paramedics because her chest pains were so severe she thought she was having a heart attack. At the hospital she was diagnosed with ulcers and gall stones, which she attributed to high anxiety, stress and tension at work. She stated that the

employing establishment had her “under a microscope.” She further alleged she made errors in her job that she would not have made under normal circumstances.

In a February 8, 1996 report, Dr. Donald C. Dunlap, an osteopath, stated appellant had been treated for stress and tension following a work-related accident on September 10, 1989. The doctor reported that on January 5, 1995 appellant was at work when she felt stabbing pains in her chest radiating down her left arm. He noted that appellant was subsequently diagnosed with gall stones and an ulcer. He stated that appellant “has a stressful work environment.”

In a February 15, 1996 report, Dr. Dunlap noted the January 5, 1996 incident of chest pain and appellant’s description of being faced with anxiety and stress due to personality conflicts at work. Dr. Dunlap diagnosed “situational anxiety stress reaction work related, peptic ulcer, chest pain, aggravation of lumbar disc injury with radiculopathy and aggravation of peripheral vascular disease.” He recommended that appellant change jobs.

By letter dated February 12 1997, the Office requested that appellant submit a clarifying statement describing in detail the factors of her employment believed to have caused or contributed to her condition.

In a decision dated March 20, 1997, the Office denied appellant’s claim for compensation on the grounds that she failed to establish fact of injury.

By letter dated July 1, 1997, appellant requested reconsideration and submitted a July 17, 1992 report from Dr. J. Douglas Crowder, a Board-certified psychiatrist. Dr. Crowder noted that appellant had a history of constant tinnitus (ringing in the ears) since 1978 or 1979, excessive anxiety, post-traumatic stress disorder following physical abuse by her first husband and major depression following a 1989 work-related back injury. According to the physician, appellant suffered from a neurotic fear of evaluation by threatening authority figures, a problem appellant first experienced in elementary school and which was “worsened and perpetuated by experiences in the air force related to perceptions of unfair treatment.” He further opined that appellant was totally disabled by depression related to her work-related back injury.

Appellant also submitted the following: a hospital admission report dated January 5, 1996; an abdominal sonogram, which revealed an 18.09 mm gall stone, an esophago-gastroduodenoscopy report, which revealed a mild esophagitis, pyloric channel ulcer a biopsy report dated January 15, 1996, which confirmed chronic active gastritis, an endoscopy report dated September 13, 1996 and progress notes dating from February 8 to June 12, 1996 pertaining to her treatment for ulcers.

In an August 22, 1996 report, Dr. Crowder noted that appellant was diagnosed with a depressive disorder during his treatment in 1992 and 1993.

In a December 2, 1997 letter, appellant related that while she was working at the employing establishment she had trouble with the secretary for the senior agent in charge, who appellant felt did not like her as “everything was required to be done 5 to 10 times and usually ended up just as it were the first time.” She complained that she did not have a supervisor to stand up for her and was unable to take the secretary’s harassment. She stated that while there

were witnesses to her harassment, no one would come forward for fear of losing their positions. She also noted that the Equal Employment Opportunity Commission (EEOC) had declined to help her. According to appellant she was not permitted to remove the necessary paperwork from the employing establishment to establish her claim, as that paperwork was deemed confidential and was made unavailable to her because she resigned her position instead of getting fired.

In an April 15, 1997 report, Dr. William V. Hartford advised that appellant underwent an endoscopy on September 13, 1996 and was found to have a healed ulcer. The doctor noted that appellant complained of dyspepsia, was fired from her job and that she attributed her symptoms to her job situation.

In an April 15, 1997 report, Dr. Dunlap noted appellant's history of ulcers and that she related having been under stress at work. He diagnosed an occupational stress disorder and prescribed medication.

In a September 16, 1997 decision, the Office performed a merit review of the record and determined that while appellant suffered from a stress disorder, she failed to allege compensable factors of her employment sufficient to establish that her emotional condition was sustained in the performance of duty.

The Board finds that appellant has failed to discharge her burden of proof to establish that she sustained an injury in the performance of duty.¹

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; 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 which 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. The 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 the relationship between the diagnosed condition and the specific employment factors identified by appellant.³

Workers' compensation law is not applicable 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 coverage

¹ Although appellant submitted evidence subsequent to the Office's September 16, 1997 decision and again on appeal, the Board does not have jurisdiction to review evidence that was not before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c).

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

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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 coverage of the Federal Employees' Compensation Act.⁴ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁵

In the instant case, appellant filed a claim for stress and stress-related ulcers, alleging that she was "under a microscope" and was harassed about her job performance by the secretary for the senior agent in charge. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁶ Appellant, however, did not submit any corroborative witness statements or other evidence to support her claim. Mere perceptions of harassment or discrimination do not constitute a compensable factor of employment.⁷

Furthermore, even though appellant has alleged that she was denied access to documentation relevant to her claim by the employing establishment because that documentation was deemed agency sensitive and confidential, the Office reasonably noted that if appellant was threatened with the possibility of being fired from her job, certain letters of warning would have been provided to her and would not have been considered to be agency sensitive or confidential. The EEOC's refusal to investigate appellant's complaints also undermines her contentions as to the actions of the employing establishment in this regard.

Inasmuch as the medical record suggests that appellant has a history of neurotic fear regarding evaluation by authority figures, without adequate corroborating evidence, appellant has failed to establish any of her allegations of harassment or disparate treatment by the employing establishment as factual. Thus, appellant has not established an injury in the performance of duty.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁶ *David W. Shirey*, 42 ECAB 783 (1991); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁷ *See Curtis Hall*, 45 ECAB 316 (1994).

The decisions of the Office of Workers' Compensation Programs dated September 16 and March 20, 1997 are hereby affirmed.

Dated, Washington, D.C.
December 13, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member