

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA A. YATES and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Jackson, Miss.

*Docket No. 98-1330; Submitted on the Record;
Issued February 19, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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

The Board has carefully reviewed the case record and finds that appellant has failed to meet her burden of proof in establishing that her diagnosed depression occurred 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 work situation giving rise to an emotional condition which will be covered under the Act.

The actions of an employee's supervisor which the employee characterizes as harassment may constitute a compensable factor, and if the record demonstrates that the employing establishment erred or acted abusively or unreasonably in the administration of a personnel

¹ 5 U.S.C. §§ 8101-8193.

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

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

matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁴ However, a claimant must support her allegations of harassment or erroneous actions with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.⁵

The initial question is whether appellant has alleged compensable employment factors as contributing to her condition.⁶ 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 compensation.⁷ If appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.⁸

In this case, appellant, then a 36-year-old legal assistant, filed a notice of occupational disease on October 9, 1996, claiming that her frequent crying spells, headaches, memory lapses, and extreme fatigue resulted from her employment. In response to an inquiry from the Office of Workers' Compensation Programs, appellant explained that her supervisor, Mary L. Cornelius, had harassed her with unwarranted memoranda and verbal threats since early 1995, and set forth several incidents, including an assault charge against Ms. Cornelius.

On April 7, 1997 the Office denied the claim on the grounds that the evidence failed to establish that appellant had sustained any mental injury. The Office noted that the "sketchy" medical report from Dr. Robert Smith, Board-certified in family practice, provided no history of alleged work factors, no diagnosis, and no opinion regarding the relationship between appellant's work and her mental condition.

Appellant requested reconsideration and submitted medical records, including those of her psychiatric hospitalization from February 27 through March 12, 1996. On January 9, 1998 the Office denied appellant's request but modified its prior decision. The Office found that the medical evidence established a diagnosis of psychosis/paranoid personality and linked this condition to "a number of negative interactions" on the job. However, appellant had failed to establish that the alleged incidents were compensable work factors and therefore had failed to meet her burden of proof in showing that her mental condition arose out of the performance of her duties.

The Board finds that the specific incidents alleged by appellant as causing her diagnosed mental condition and resultant hospitalization are not compensable work factors. First, appellant stated that the training memorandum she received in November 1995 from Ms. Cornelius was "wrong" and was just meant to harass appellant, whose request to be removed from

⁴ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

⁵ *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

⁶ *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

⁷ *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

⁸ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

Ms. Cornelius' supervision was denied. This incident is an administrative matter and is not covered under the Act unless management erred or acted unreasonably. Here, there is no evidence of such error or abuse.⁹

Second, appellant alleged that her supervisor's refusal to accept her medical excuse for her two-week absence in January 1996 resulted in a crying spell and mental stress. Appellant stated that her supervisor was wrong and that the medical note from Dr. Smith supported her sick leave request. Actions of a supervisor regarding leave usage are generally not considered compensable work factors unless error or abuse is shown. Again, there is no evidence of such error or abuse. By her own admission, appellant was not placed on leave without pay and suffered no wage loss. Dr. Smith reported on January 17, 1996 that appellant's cardiac stress test and the rest of the studies he had ordered were normal.

Third, appellant stated that she was subjected to stress and humiliation when her conversation with management was tape recorded; appellant added that she was informed of the meeting only an hour beforehand and objected to the recording. The meeting on February 20, 1996 was a formal counseling session dealing with appellant's "outburst" on January 26, 1996 after she was asked to cut short a personal telephone call and return to work. Appellant remembered only "bits and pieces" of the incident, but Ms. Cornelius wrote a memorandum detailing appellant's misconduct and disruption of the workplace by shouting religious phrases and crying out that she was "saved."

A transcript of the February 20, 1996 meeting indicated that Ms. Cornelius informed appellant that she had violated the standards of conduct, that her behavior on January 26, 1996 was "upsetting to the entire office and totally unacceptable," that conduct of that nature would not be condoned or tolerated and that any future outbursts could result in severe disciplinary action. While a witness to the incident referred to Ms. Cornelius' "provoking, military style of supervision in the office," there is no evidence that management erred or acted unreasonably in counseling appellant about her behavior in the workplace.¹⁰

Fourth, appellant alleged that Ms. Cornelius deliberately knocked her into a co-worker on February 21, 1996 while passing in a walkway and filed a formal complaint for assault against her supervisor. Appellant stated that her supervisor was "trying to take my shoulder off" and her witness stated that the physical contact between appellant and her supervisor was "a malicious act" and could have been avoided. However, appellant admitted that Ms. Cornelius was found not guilty of the assault charge and appellant submitted no evidence showing that Ms. Cornelius committed any unwarranted act against her.

Fifth, appellant related her fears that Ms. Cornelius, because of her military background, would come to her home and "invoke danger" on her and her family. Appellant also charged that the employing establishment, the U.S. Attorney's Office, and her supervisor were out to get her

⁹ See *Effie O. Morris*, 44 ECAB 470, 473 (1993) (finding that appellant's assertions that the employing establishment erred or acted abusively in administering personnel matters were unsupported by any evidence).

¹⁰ 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).

and conspired to destroy her. Such perceptions are self-generated and unrelated to any assigned duties and thus are not considered to be a compensable factor of employment.¹¹

Sixth, appellant stated that while in the hospital in March 1996 she was placed on absent without leave status by her supervisor “intentionally and to cause harm” to her. Ms. Cornelius stated in a memorandum that appellant’s sick leave had expired on February 23, 1996 and that she was being carried as absent without leave because the employing establishment had no signed leave statement from her. Upon receipt of the proper form, “the matter was rectified,” according to appellant. Again, the record contains no evidence of error or abuse on the part of management.

Seventh, appellant alleged that her supervisor demoted her to a “floater” position after she returned to work and would not reassign her to an administrative law judge but instead assigned a co-worker with less seniority. Appellant’s preference for a particular work assignment is not a compensable work factor.¹²

Appellant’s allegations of “constant harassing and unbearable stress” inflicted upon her by her supervisor are not corroborated by witnesses or any of the documents that she indicated she would provide. Further, appellant has not shown that her emotional condition resulted from her day-to-day work, a special assignment, a requirement imposed by the employing establishment, or the nature of the work.¹³

Inasmuch as appellant has failed to provide the requisite information supporting her various allegations,¹⁴ the Board finds that appellant has failed to meet her burden of proof in establishing that her emotional condition arose of the performance of duty. Because appellant has failed to establish that work factors caused her emotional condition, the Board need not consider the medical evidence.¹⁵

The January 9, 1998 and April 7, 1997 decisions of the Office of Workers’ Compensation Programs are affirmed.¹⁶

¹¹ 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).

¹² See *Peggy Ann Lightfoot*, 48 ECAB ____ (Docket No. 95-1676, issued May 2, 1997) (finding that denial of a promotion is not compensable because such denial constitutes the employee’s desire to work in a different position).

¹³ 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).

¹⁴ See *Joe E. Hendricks*, 43 ECAB 850, 857 (1992) (finding that appellant’s allegations regarding the causes of his stress did not represent compensable work factors).

¹⁵ 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).

¹⁶ Appellant submitted a January 27, 1998 letter from her treating physician, Dr. Krishan K. Gupta, a family

Dated, Washington, D.C.
February 19, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

practitioner who stated that she was presently experiencing a lot of stress due to her employment and could not work at her job. The Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); *William A. Couch*, 41 ECAB 548, 553 (1990). Thus, the new evidence dated January 27, 1998 cannot be considered by the Board because it post dates the Office's final decision dated January 9, 1998.