

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BONNIE J. MAHRT and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Los Angeles, Calif.

*Docket No. 96-1538; Submitted on the Record;
Issued January 5, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained an aggravation of discoid lupus in the performance of duty.

The Board finds that the case is not in posture for decision.

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.²

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 employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴ If a claimant

¹ 5 U.S.C. §§ 8101-8193.

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

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

does implicate a factor of employment, the Office of Workers' Compensation Programs should then determine whether the evidence of record substantiates that 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.⁵

In the present case, appellant alleged that she sustained an aggravation of discoid lupus in the performance of duty. By decision dated March 20, 1996, the Office denied appellant's claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that she was sexually harassed at work and that the employing establishment retaliated against her for filing Equal Employment Opportunity (EEO) claims. To the extent that disputes the 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 However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.⁷ In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors or coworkers.⁸ Appellant alleged that supervisors and coworkers made statements and engaged in actions which she believed constituted harassment and discrimination, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.⁹ Appellant filed EEO claims with respect to her allegations of harassment and discrimination, but the record does not contain an EEO decision finding error or abuse on the part of the employing establishment in this regard. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegations that the employing establishment unfairly denied her several requests for transfer to other work locations and did not make adequate accommodations for her medical condition, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within coverage of the Act.¹⁰ Although the handling of such actions are generally related

⁵ *Id.*

⁶ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁷ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁸ *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

⁹ *See William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁰ *See Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

to the employment, they are administrative functions of the employer, and not 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 did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. Appellant filed EEO claims with respect to her allegations that she was unfairly denied transfers, but the record does not contain an EEO decision finding error or abuse on the part of the employing establishment in this regard. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant also alleged that her discoid lupus condition was aggravated by the stressful conditions of her work as an air traffic controller. She indicated that her job duties were particularly stressful when she continued to work after the air traffic controllers strike in the 1980s. Appellant noted that she worked overtime for various periods, including occasions when she worked six days per week. The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.¹³ The Board notes the record supports that appellant has established an employment factor with respect to the performance of her air traffic controller duties.

In its March 20, 1996 decision, the Office denied appellant's claim on the grounds that she did not establish any compensable employment factors. Appellant submitted several medical reports in which attending physicians described the progression and treatment of her discoid lupus condition. In some of these reports, the physicians indicated that appellant's work duties contributed to her condition. Because it has been accepted that appellant's air traffic controller duties constitute an employment factor, the case should be remanded to the Office for evaluation of whether appellant's medical condition is causally related to the accepted employment factor. After any further development deemed necessary, the Office should issue an appropriate decision regarding appellant's claim.

¹¹ *Id.*

¹² *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹³ *See Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

The decision of the Office of Workers' Compensation Programs dated March 20, 1996 is set aside and the case is remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
January 5, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member