

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GAIL L. KING and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, Jacksonville, Fla.

*Docket No. 96-1824; Submitted on the Record;
Issued January 4, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained an emotional condition in the performance of duty.

On July 21, 1995 appellant, then a 42-year-old tool and parts attendant, filed an occupational disease claim alleging that she sustained an emotional condition causally related to factors of her federal employment. In various written statements and a telephone conference with an Office of Workers' Compensation Programs' claims examiner, she attributed her condition to harassment and discrimination from her supervisors, improper handling of overtime assignments by the employment establishment, receiving a change in work shift, not receiving a cash award,¹ being dissatisfied with her performance rating, being harassed by a coworker, Mr. Smitley, being dissatisfied with certain work assignments, and being denied a promotion.

An EEOC counselor's report dated January 3, 1994 indicated that Mr. Smitley received a disciplinary letter from the employing establishment for messages left in the log book which offended appellant.

In a memorandum dated July 6, 1994, Mr. Alvin Hall, a supervisor, noted that he had verbally reprimanded Mr. Smitley regarding his "inappropriate behavior" towards appellant and that Mr. Smitley was told that future occurrences of inappropriate behavior would result in disciplinary action.

In a report dated April 28, 1995, Walter S. McDermott, Ph.D., a licensed psychologist, provided a history of appellant's condition and the results of a psychologic evaluation and diagnosed a major depressive episode without psychotic features and avoidant personality traits. Dr. McDermott related appellant's complaints about the employing establishment but he did not express an opinion as to the cause of appellant's condition.

¹ Appellant alleged that she did not receive a cash award for a job for which other employees received a \$100.00 cash award. She filed an Equal Employment Opportunity Commission (EEOC) complaint and subsequently received the same cash award as the other employees.

In a report dated June 15, 1995, Dr. Leslie W. Beadling, a Board-certified specialist in obstetrics and gynecology, related that appellant had symptoms of depression and a history of panic attacks. He noted that appellant attributed her feelings and symptoms to stress at her place of work but he did not provide his opinion as to the cause of appellant's condition.

In a memorandum dated August 1, 1995, supervisor James Fair denied that appellant was harassed or discriminated against by the employing establishment and stated that investigations of appellant's complaints had not revealed any evidence of discrimination.

In a written statement dated September 7, 1995, Mr. Fair stated that he had never discriminated against appellant and he stated that work conditions at the employing establishment were not hostile. He noted that appellant had requested job transfers but had rejected new job offers on three occasions. Mr. Fair noted that appellant had requested a change in work shifts and then changed her mind and withdrew her request.

By decision dated February 13, 1996, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that she had sustained an emotional condition causally related to compensable factors of employment.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of her employment.

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 emotional 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.² 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.³

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 compensable employment factors.⁴

Regarding appellant's allegations that the employing establishment did not properly handle overtime assignments and changed her work shift, 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 the coverage of the Act.⁵ Although the handling of

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁵ See *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Michael Thomas Plante*, 44 ECAB 510, 516 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

such matters is generally related to the employment, these matters are administrative functions of the employer, and not duties of the employee.⁶ 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 this case, there is insufficient evidence of record that the employing establishment erred or acted abusively in the handling of overtime hours or work shifts. Appellant has not established a compensable employment factor under the Act in this respect.

Another allegation of appellant was that she did not receive a cash award that was granted to other employees for the same task. The record shows that she later received the award after filing an EEOC complaint. However, the mere fact that personnel actions were later modified or rescinded, does not, in and of itself, establish error or abuse.⁷ The Board finds that there is insufficient evidence of error or abuse in the handling of the cash award such that this incident constitutes a compensable factor of employment.

Regarding appellant's allegation of denial of a promotion, the Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform her regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.⁸ Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant has stated that she was dissatisfied with her work assignments. As previously noted, disability is not covered where it results from frustration in not being permitted to work in a particular environment or to hold a particular position.⁹ Therefore, this situation does not constitute a compensable factor of employment.

Appellant has also alleged that harassment and discrimination on the part of her supervisors and coworkers contributed to her claimed stress-related condition. 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.¹⁰ 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. In the present case, regarding the incidents involving appellant's coworker, Mr. Smitley, the evidence shows that the employing establishment disciplined him for his actions toward appellant. An EEOC report indicated that Mr. Smitley received a disciplinary letter from the employing establishment regarding the derogatory messages left in the log book and a supervisor noted in a memorandum that he had reprimanded Mr. Smitley for his behavior towards appellant. Therefore, the harassment of appellant by Mr. Smitley is a compensable factor of employment.

⁶ *Id.*

⁷ *Michael Thomas Plante, supra note 5.*

⁸ *Donald W. Bottles, 40 ECAB 349, 353 (1988).*

⁹ *See also Eileen P. Corigliano, 45 ECAB 581, 584 (1994); Neil F. Carney, 36 ECAB 289, 297-98 (1984).*

¹⁰ *David W. Shirey, 42 ECAB 783, 795-96 (1991); Kathleen D. Walker, 42 ECAB 603, 608 (1991).*

Appellant's burden of proof is not discharged by the fact that she has established employment factors which may give rise to a compensable disability under the Act. As noted above, appellant must also submit rationalized medical evidence establishing that her claimed emotional condition is causally related to an accepted compensable employment factor.¹¹ In this case, there is no rationalized medical evidence of record establishing that appellant's emotional condition was causally related to the actions of Mr. Smitley. In a report dated April 28, 1995, Mr. McDermott, a licensed psychologist, related appellant's complaints about the employing establishment but he did not express an opinion as to the cause of appellant's condition. In a report dated June 15, 1995, Dr. Beadling, a Board-certified specialist in obstetrics and gynecology, noted that appellant attributed her feelings and symptoms to stress at her place of work but he did not provide his opinion as to cause of appellant's condition.

For the foregoing reasons, appellant has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

The February 13, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
January 4, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹¹ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).