

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALVERA J. BENNETT and DEPARTMENT OF JUSTICE,
FEDERAL PRISON SYSTEM, Terminal Islaca, Calif.

*Docket No. 97-181; Submitted on the Record;
Issued January 14, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained an emotional condition due to factors of her federal employment.

On March 11, 1996 appellant, then a 35-year-old secretary, filed a notice of occupational disease and claim for compensation (Form CA-2) for the condition of severe headaches. In a May 14, 1996 statement, appellant expanded her claim for the condition of stress and mental anguish and provided several witness statements.

In her May 14, 1996 statement, appellant stated that her supervisor, Dennis Hendershot, asked her to remove her live plants from the office, took away her computer equipment and relocated her to another office. Appellant stated that Mr. Hendershot indicated her writing skills were inadequate and wrote her up for being late to work when she was actually in another office. Appellant further stated that Mr. Hendershot called each area where she was going.

A June 15, 1995 letter from John S. Saroyan, M.F.C.C., stated that appellant is experiencing physical pain which appears to coincide with stressful changes that occurred at work.

February 3, 1996 treatment notes from a physician, whose signature is illegible, diagnosed migraine and anxiety attacks.

On August 15, 1996 the Office of Workers' Compensation Programs conducted a telephone conference with Mr. Hendershot, appellant's supervisor. In an August 26, 1996 letter, he reviewed appellant's statement, and provided additional comments regarding appellant's allegations of stress at work. Mr. Hendershot noted that: (1) he had suggested that limiting plants and personal property in the office would improve the office's appearance; (2) he stated that two old computers were returned to the computer specialist for disposal and that one of those were from appellant's desk. He stated that appellant had access to three other computers in

her immediate surroundings, and that none of her required job duties involved the use of a computer; (3) Mr. Hendershot stated that appellant's staff meeting notes were unacceptable because of grammar and spelling errors. He reassigned the task of taking minutes to another employee; (4) Mr. Hendershot stated that appellant's meeting notes were deleted from the sentry mailbox. He stated that common office practice was to review the sentry mailbox daily and outdated messages deleted; (5) Mr. Hendershot stated that appellant's office was moved to a different office due to an increase in staff of the unit. Appellant was asked to check out the keys to her unit. After a subsequent review of the directive regarding keys, it was indicated that appellant should retain her original set of keys to include access to the J Unit and central files; (6) Mr. Hendershot stated that he did not direct, or at any time suggest, that appellant receive permission to leave the office. Nor did he check up on her whereabouts. He did state that as the two units which he supervised are detached, he would occasionally need to call around to find appellant, as the only contact besides walking from unit to unit was by telephone; (7) Mr. Hendershot further stated that he does not recall ever writing up appellant as being late for work. He stated that he has no record of this nor does he recall it ever being an issue.

By decision dated September 3, 1996, the Office denied appellant's claim on the grounds that she failed to establish that she sustained an emotional condition as a result of her employment. In the attached memorandum, the Office accepted that Mr. Hendershot suggested that limiting plants and personal property in the office would improve the office's appearance; an old computer was removed from appellant's desk and returned to the computer specialist for disposal; appellant's staff meeting notes were unacceptable and the task of taking minutes was reassigned to another employee; appellant's meeting notes were deleted from the sentry mailbox; and appellant's office was moved to a different location and she retained her original set of keys to include access to the J Unit and central files. The Office additionally found that the accepted incidents were administrative actions. The Office found that appellant had not provided sufficient evidence to support the acceptance of the other events alleged. The Office also found that the medical evidence did not establish a work-related emotional condition.

The Board finds that appellant has failed to establish that she sustained an emotional condition due to factors of her federal 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 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 is compensable. Disability is not 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 or to hold a particular position.¹

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or

¹ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

adversely affected by factors of her federal employment.² 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.³

As there is medical evidence indicating that appellant has an emotional condition, the initial question presented is whether appellant has alleged and substantiated compensable factors of employment as contributing to her condition.

In the present case, appellant has not substantiated a compensable factor of employment. Appellant essentially attributes her emotional condition to supervisory and management abuse of power by her immediate supervisor. However, mere perceptions of harassment and discrimination are not compensable under the Federal Employees' Compensation Act.⁴ The general standard for allegations involving administrative or personnel matters is that although these are related to employment, they are primarily duties of the employer rather than regular duties of the employee. In order to establish a compensable factor, there must be evidence of error or abuse by the employing establishment.⁵

Appellant has alleged supervisory and management abuse of power by her immediate supervisor, Mr. Hendershot, which include limiting plants and personal property in the office, removal of an old computer on appellant's desk, finding appellant's staff meeting notes to be unacceptable and reassigning the task to another employee, deleting meeting notes from the sentry mailbox, and moving appellant's office to another area. The Office found that these were administrative actions. Where the employing establishment's actions complained of are administrative in nature, coverage is afforded only if abuse or error is shown. To determine if abuse or error is shown regarding employing establishment's action, the Board applies a reasonableness standard.⁶ The record indicates that the office appeared cluttered and unorganized; thus it was reasonable for the supervisor to suggest limiting plants and personal property to improve the office's appearance. Similarly, it was also reasonable to remove old computers for disposal, especially when other computers were available in the immediate surroundings. It is noted that, in this case, that none of appellant's primary job duties required the use of a computer. The record indicates that as appellant's staff meeting notes were unacceptable because of grammar and spelling errors, it was reasonable for the supervisor to reassign that task to another employee. It was also reasonable for the supervisor to delete appellant's meeting notes from the sentry mailbox as it was a common office practice to review the sentry mailbox daily and delete outdated messages. It was also reasonable for the supervisor

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁵ *See Donald E. Ewals*, 45 ECAB 111 (1993).

⁶ *See Frederick D. Richardson*, 45 ECAB 454 (1994).

to move appellant's office due to an increase in staff of the unit. Thus, from the allegations which the Office accepted as factual, there is no evidence of error or abuse by the employing establishment.

As appellant failed to submit sufficient evidence to corroborate her claim to establish that the employing establishment erred or acted abusively, she has not established a compensable factor of employment that is substantiated by the record and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.⁷

The decision of the Office of Workers' Compensation Programs dated September 3, 1996 is affirmed.

Dated, Washington, D.C.
January 14, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).