

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RUTH A. MOORE and DEPARTMENT OF TRANSPORTATION,  
FEDERAL AVIATION ADMINISTRATION, MINNEAPOLIS FLIGHT  
STANDARDS DISTRICT OFFICE, Minneapolis, Minn.

*Docket No. 97-1351; Submitted on the Record;  
Issued January 8, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained an emotional condition in the performance of duty as alleged.

On July 3, 1996 appellant, then a 55-year-old aviation safety assistant, filed a claim for "emotional stress" sustained in the performance of duty on or after January 1, 1993.

Appellant submitted medical evidence in support of her claim. In a May 21, 1996 letter, Dr. John Shirriff, an attending psychiatrist, and Ms. Karen Brinkman, an attending psychologist, recommended that appellant be transferred to another department at the employing establishment. In a July 2, 1996 report, Ms. Brinkman recommended that appellant take three weeks off from work, work two months part time, then resume full-time work. In a July 3, 1996 report, Dr. Shirriff noted appellant related feeling "intimidated and harassed by supervisors," with symptoms of anxiety and depression. He diagnosed dysthymia and prescribed medication.

In an October 3, 1995 report, Ms. Brinkman noted appellant's account of stress at work but did not relate any specific incidents. She noted that appellant appeared jittery and related symptoms of insomnia and depression. Ms. Brinkman diagnosed an anxiety disorder and dysthymia.

In an undated statement, Mr. Robert B. Turner, an employing establishment supervisor, noted that appellant had previously requested transfers as early as October 31, 1990 and on June 4, 1996 presented her supervisor a copy of Dr. Shirriff's and Ms. Brinkman's May 21, 1996 report and Ms. Brinkman's July 2, 1996 recommendation that appellant take time off work. Mr. Turner stated that he could not ascertain the cause of appellant's request for transfer, but that he supported appellant's efforts to "secure a transfer."

In an October 23, 1996 letter, the Office of Workers' Compensation Programs advised appellant of the type of additional medical and factual evidence needed to establish her claim. The Office specifically requested detailed descriptions of any disputes with coworkers or superiors, dates and details regarding her allegations concerning denial of a job transfer and a rationalized medical report from her attending physician explaining how and why the alleged work factors would cause the claimed emotional condition.

In a November 19, 1996 letter, appellant expressed apprehension at supplying details of the work factors alleged to have caused her condition, as it would be detrimental to certain persons and she did not want to create difficulties for them. She stated that her use of "sick leave equates to thousands of dollars," and that she could "not afford to be penalized in this manner due to another's actions." Appellant stated that her illness stemmed from unspecified "very negative" actions and "offensive" behavior by her supervisors. "My job activities did not contribute to my condition, my manager and two supervisors caused it." Appellant noted that she was "overburdened with assignments, but that is not my issue. I did not mind the additional work load." She noted that others promoted an unspecified conflict between her and unnamed employees. Appellant stated that her supervisor was "never satisfied, no matter how much I tried to accommodate the office. I was not advised of any conduct or discipline problems other than with one person who did not like me. My supervisor stated he gave me a lower rating on my performance appraisal because of this while she was praised." Appellant stated that she had no disputes over leave usage and that her claimed condition was unrelated to her request for a transfer.

In a November 27, 1996 letter, Mr. Turner generally controverted appellant's claim. He noted that on September 15, 1996, appellant was reassigned at her request to the certificate management office. Mr. Turner acknowledged that there were "staffing shortages although many tasks" previously performed by appellant "were taken over by the inspector work force ... [R]edistribution of job functions did not create a detrimental work load or extra demands placed on [appellant]." Mr. Turner stated that appellant's "performance declined any time she was asked to perform administrative duties within her position description, which she did not like to do," such as answering telephones, filing and clerical entries. He noted appellant had a "history of conduct problems" and "outbursts with other employees or leaving the job after being requested to perform a task she did not like to accomplish."

In a December 5, 1996 report, Ms. Brinkman stated that appellant's symptoms of anxiety, insomnia and depression were related to unspecified elements of her work environment.

In a January 15, 1997 letter, the Office again advised appellant that she had the burden of establishing the factual basis for her emotional condition claim. The Office requested that appellant provide the names of involved persons, the dates and complete descriptions of any incidents alleged to have caused the claimed condition. The Office noted that appellant's account of events would then be provided to the employing establishment for comment and verification.

In a January 28, 1997 letter, appellant stated that office manager Kathleen B. Thompson, and supervisors Mr. Turner and Richard G. Egan were "responsible" for the "basis" of her claim, and would verify that appellant was under stress and taking medications. Appellant stated that

she would not be more specific as she “chose not to involve any person” still working at the employing establishment.

By decision dated July 7, 1997, the Office denied appellant’s claim on the grounds that fact of injury was not established. The Office found that although appellant was informed by October 23, 1996 and January 15, 1997 letters of the type of factual and medical evidence needed to establish her claim, she did not submit a sufficient description of the work factors alleged to have caused her claimed emotional stress condition.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty as alleged.

Under workers’ compensation law, when an employee experiences an emotional reaction to his or her regular or specially assigned work duties or to a requirement imposed by the employment, or has fear and anxiety regarding his or her ability to carry out his or her duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment and comes within the scope of coverage of the Federal Employees’ Compensation Act.<sup>1</sup> Disabling conditions resulting from an employee’s feeling of job insecurity, or the desire for a different job do not constitute personal injury sustained, while in the performance of duty within the meaning of the Act.<sup>2</sup>

To establish appellant’s occupational disease claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her conditions<sup>3</sup>; (2) rationalized 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.<sup>4</sup>

In this case, appellant has not met the threshold element of this three-part test. Although she was advised by October 23, 1996 and January 15, 1997 letters of the additional factual and medical evidence needed to establish her claim, including the dates and complete descriptions of alleged incidents and the names of the persons involved, appellant did not identify the specific employment factors alleged to have caused her emotional condition. In November 19, 1996 and January 28, 1997 letters, appellant attributed her condition to unspecified “negative” and “offensive” behavior by office manager Ms. Thompson, and supervisors Mr. Turner and Mr. Egan. She alleged that others promoted an unspecified conflict between her and unnamed

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<sup>1</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>2</sup> *Raymond S. Cordova*, 32 ECAB 1005 (1981).

<sup>3</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>4</sup> *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

employees, leading to a lower performance rating.<sup>5</sup> Appellant stated that her condition was unrelated to her request for a transfer, work load or disputes over leave usage. She did not allege that any specific incidents, job duty or employment factor caused her emotional condition. Thus, appellant has not met her burden of proof as she failed to establish any compensable factor of employment.

The decision of the Office of Workers' Compensation Programs dated February 7, 1997 is hereby affirmed.

Dated, Washington, D.C.  
January 8, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

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<sup>5</sup> Appellant did not specify the date of this performance rating, or which supervisor performed the rating. Arguendo, an employee's reaction to a performance rating is not a covered factor of employment. *Michael Thomas Plante*, 44 ECAB 510 (1993); *Effie O. Morris*, 44 ECAB 470 (1993).