

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BETTY J. GRUNBAUM and DEPARTMENT OF JUSTICE,  
IMMIGRATION & NATURALIZATION SERVICE, Oakdale, La.

*Docket No. 97-2413; Submitted on the Record;  
Issued June 14, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has established that she developed an emotional condition in the performance of duty causally related to factors of her federal employment.

On May 3, 1996 appellant, then a 49-year-old deportation clerk – typing, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that on February 1, 1995 she realized her stress was due to her employment.<sup>1</sup> In an attached statement, appellant alleged that she began having chest pains on February 1, 1995 when Officer Strother criticized Officer Bouie in a loud voice and kept repeating certain words over and over. Appellant also alleged that the work environment is hostile, intimidating and that she encounters daily harassment and pranks which are nasty and slanderous. Appellant alleges that her stress was due to not being informed of new office procedures; Officer Strother glaring at her when her phone rings; Officer Strother listening to her conversations while pretending to use the computer at the desk next to her desk; Officer Strother lying by stating she gave incorrect information to another immigration officer; her deportation officer's phone not being answered when she was on another business call; Officer Strother implying to that she gave an inmate's family an incorrect phone number; her work not being completed while she is on vacation; her work not being completed while she was assigned to another section for 30 days; her coworkers impeding her work performance by excluding her from work assignments and changing office procedures; detention enforcement officers being sent to check out the length of her skirt; threatening remarks; office discussions revolving around which black person was liked better; her supervisor stating that she was dreaming things; and that she was crazy and loud at office parties.

In an unsigned note, Joe Williams, a supervisory deportation officer, stated that he had not witnessed any of the allegations by appellant nor had there been any verification. He also

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<sup>1</sup> Appellant filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) on March 26, 1996 alleging that her chest pains and pressure, heartburn, headaches, fatigue, indigestion, insomnia, exhaustion and tightness in her neck area were due to her employment.

swore that the office conditions were not hostile or intimidating toward employees under his supervision and that he had not witnessed any nasty pranks or daily harassment.

In a note dated March 5, 1996, Dr. Lori E. Vidrine-Parks, appellant's attending Board-certified internist, indicated that she had been treating appellant for three years for breast cancer and high blood pressure. Dr. Vidrine-Parks opined that appellant's recent mental anxiety and chest pains were due to work-related problems.

In a note dated March 20, 1996, Dr. Vidrine-Parks stated that appellant "has been experiencing much stress at her workplace" and this has occurred during the past year and worsened in the last three to six months.

In a report dated April 14, 1996, Dr. Vidrine-Parks opined that appellant's medical problems of irritable bowel syndrome, chest pains and anxiety were due to her employment.

In a report dated May 8, 1996, Dr. Vidrine-Parks reported that appellant stated that on February 1, 1995 she first noted her symptoms of chest tightness, chest pain, shortness of breath and irritable bowel were due to stress and anxiety caused by her work. Dr. Vidrine-Parks opined that "her emotional problems just finally took a toll on her and she did n[o]t have any free time to herself to be able to catch up on exercising and stress management etc." She recommended appellant take 30 days of leave and then after that she should be able to return to full duty.

By letter dated June 19, 1996, the Office of Workers' Compensation informed appellant that the evidence was insufficient to support her claim for an emotional condition. The Office then advised appellant as to the information needed to support her claim.

In a letter dated July 17, 1996, appellant stated that she felt physically better when she was not at work. Appellant again alleged that she worked in a hostile environment filled with discriminatory acts. She identified work conditions as she constantly heard whispering and her name mentioned, loud outbursts, coworkers who lie to callers by telling them appellant gave them incorrect information and slanderous remarks by coworkers.

By decision dated November 21, 1996, the Office rejected appellant's claim finding that she failed to submit evidence to establish that she had sustained an injury in the performance of duty as alleged. In the attached memorandum, the Office found that the medical evidence supported that appellant had submitted medical evidence supporting that she has a medical condition due to employment factors. However, the Office found that appellant had failed to submit any supporting or corroborating evidence to support her allegations.

In a letter dated December 1, 1996, appellant requested reconsideration and submitted a Equal Employment Opportunity (EEO) notice of final interview dated May 8, 1996, a report of EEO counseling and a newspaper article regarding the Immigration and Naturalization Service in support of her request. Appellant also alleged in her letter that Mr. Williams made false statements when he stated that he had never witness harassment or nasty pranks in the office in talking to the EEO counselor.

The EEO notice of final interview indicated that appellant initially contacted an EEO counselor because she believed Mr. Williams, treated her unfairly by distributing the work of a detention clerk on February 6, 1996 and that her work assignments had not been distributed when she had been out on sick leave for one day. The EEO counselor in the final interview indicated that appellant also alleged a hostile work environment due to racial slurs, unprofessional behavior, feelings of alienation, attempts to discredit appellant and hostile and demeaning looks.

In the report of counseling, the EEO counselor indicated she had talked to Mr. John Caplinger, district director -- New Orleans; Ms. Nancy Hooks, officer-in-charge at Oakdale; Mr. Williams -- Oakdale; Mr. George Bouie, deportation officer; Ms. Pam Benoit, former docket clerk at Oakdale; Ms. Shirley Epperson, deputy district director -- New Orleans; and appellant. In her interview, appellant alleged that her supervisor distributed work unfairly, that a coworker's assignments were distributed when she had only been out one day, that appellant did not have her work distributed when she had been out one day, that work that had been distributed while she was on vacation was returned to her inbox upon her return and her supervisor shows favoritism. Appellant alleged that the workplace is hostile. She alleged that Ms. Strother told field offices that appellant had given out incorrect information which was untrue and that Ms. Strother belittled Mr. Bouie for 15 minutes in front of the entire office. Appellant stated that she heard Ms. Perry comment that an African American student was stupid and that she is stupid. Mr. Caplinger stated he did not believe anyone was intentionally trying to alienate appellant and that he was not surprised that her supervisor was timid about taking action. He did not believe there was any age or racial discrimination toward appellant, but that the problem was due to personality differences. Ms. Hooks believed appellant had alienated herself from the rest of the office and that the age difference may have caused some misunderstandings. She indicated that appellant made accusations of slander and stalking which were very general. Mr. Williams indicated that the clerk's work which had been distributed had actually missed nine days out of a two-week period. He denied seeing any alienation of appellant. He stated that he had talked to Ms. Strother and Ms. Perry due to appellant's complaints. Mr. Bouie opined that there is a hostile work environment at Oakdale where he and appellant work. He stated that there were four women who talked about appellant behind her back and tried to isolate her. He indicated he overheard the women, Ms. Perry, Ms. Strother, Ms. Johnson and Ms. Gueringer, commenting that appellant's dress was too short. Mr. Bouie stated that he heard Ms. Gueringer say she would not mind slapping her and that she was referring to appellant. Ms. Benoit stated that there is a group, which consists of Ms. Strother, Ms. Perry, Ms. Johnson and Ms. Gueringer, that tends to stick together, exclude newcomers and dominate the office. Ms. Benoit believed that appellant was ostracized due to her age and race. Ms. Benoit indicated that she, as well as several other females, had left Oakdale due to the working conditions and environment. Ms. Epperson stated that Oakdale was very crowded and noisy so that it can cause disruption and conversations to be overheard. She did not believe that appellant was being discriminated against due to her age. In her summary, the EEO counselor stated that a proposed settlement agreement was in process and would be available for review by appellant during the week of May 6, 1996.

By decision dated December 23, 1996, the Office, in a merit review, denied appellant's request for reconsideration as the evidence submitted was insufficient to warrant modification of its prior decision. In the attached memorandum, the Office noted that the evidence of record was

insufficient to establish that she had been harassed or discriminated against and that unsubstantiated allegations regarding the employer are not accepted as factual.

By letter dated May 17, 1997, appellant requested reconsideration of the December 23, 1996 decision and attached a statement from Mr. Bouie. Appellant also argued that Mr. Williams was a liar when he said the Office did not have any discrimination. In his statement, Mr. Bouie stated that he witnessed Ms. Gueringer urging employees not to talk to appellant, that he heard some women in the office making comments and talking behind appellant's back, that remarks such as stupid and wearing skirts too short for her age, etc. were made. Mr. Bouie also indicated that he heard Ms. Gueringer state that she "would not mind slapping" appellant and that appellant told him that Ms. Gueringer and Ms. Johnson made physical threats. Lastly, Mr. Bouie stated he had talked to Mr. Williams about these problems, but Mr. Williams stated that Mr. Bouie "was paranoid and Mr. Grunbaum was crazy and imaging things."

By decision dated May 23, 1997, the Office denied appellant's request for a review of the prior decision on the merits, finding that the evidence submitted was repetitious and insufficient to warrant merit review of its prior decision.

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

To establish appellant's claim that she has 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 condition; (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>2</sup> Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.<sup>3</sup>

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 coverage of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability

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<sup>2</sup> See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>3</sup> *Id.*

results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. Disability is not compensable, however, where it results from factors such as an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position or to secure a promotion.<sup>4</sup>

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered.<sup>5</sup> When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.<sup>6</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office should award compensation.

To the extent that disputes and incidents alleged as constituting harassment and discrimination by coworkers are established as occurring and arising from appellant's performance of his or her regular duties, these could constitute employment factors.<sup>7</sup> 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.<sup>8</sup>

Appellant has alleged that she suffered repeated harassment, both racial and age related, from her coworkers. However, appellant presented no evidence, in the form of witness statements, a settlement agreement or written documentation, to support her allegations that her coworkers lied to callers by telling them that appellant gave them incorrect information, threatened her, that she encountered daily harassment and nasty pranks, that her coworkers were impeding her work performance and changing office procedure without telling her. Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The EEO complaints submitted by appellant only allege harassment; they do not establish that it occurred. A claimant must substantiate such allegations with probative and reliable evidence.<sup>9</sup>

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<sup>4</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *See Barbara Bush*, 38 ECAB 710 (1987).

<sup>6</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>7</sup> *See David W. Shirey*, 42 ECAB 783 (1991); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>8</sup> 5 U.S.C. §§ 8101-8193; *see Jack Hopkins, Jr.*, 42 ECAB 818 (1991).

<sup>9</sup> *Donna Faye Cardwell*, *supra* note 2 (for harassment to give rise to a compensable disability there must be some

Appellant submitted a witness statement from Mr. Bouie. He stated that he heard Ms. Gueringer say she would like to slap her referring to appellant, that the women in the office talked behind appellant's back and made unkind remarks. Mr. Bouie stated that he overheard the various comments, but did not state that he witnessed any of the various comments actually made to appellant. He noted that appellant had told him that Ms. Gueringer and Ms. Johnson threatened her, but did not mention that he had not witnessed the incidents alleged by appellant. Mr. Bouie's statements are insufficient as he does not specify when the comments he overheard occurred nor that the comments, such as Ms. Gueringer saying she would like to slap her in reference to appellant and that appellant's dress was too short, were actually made to appellant.

Lastly, appellant alleged that the distribution of the work was unfair in that her work was not distributed when she had been off one day and that work was returned to her inbox when she returned from being on vacation. The assignment of work is recognized as an administrative function of the employing establishment and, absent any error or abuse, does not constitute a compensable factor of employment.<sup>10</sup> Mr. Williams denied that he unfairly distributed the work. He also stated that he had distributed a clerk appellant's work when she was out one day since the individual had been out of the office nine days in a two-week period. Appellant has not submitted any evidence to support her allegation that the distribution of work was unfairly made. Therefore, this allegation is not supported by the evidence of record.

For the foregoing reasons, as appellant has not established any compensable factors of employment, she has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty on or after February 1, 1995.<sup>11</sup>

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evidence that harassment or discrimination did in fact occur); *Ruthie M. Evans*, *supra* note 6. *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

<sup>10</sup> See *Peggy R. Lee*, 46 ECAB 527 (1995).

<sup>11</sup> Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence; see *Margaret S. Krzycki*, 43 ECAB 496 (1992).

The decision of the Office of Workers' Compensation Programs dated May 23, 1997 is hereby affirmed.

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

George E. Rivers  
Member

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member