

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TRUDI MARCHANT and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Brooklyn, N.Y.

*Docket No. 97-59; Submitted on the Record;
Issued March 12, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

On October 28, 1994 appellant, then a 46-year-old secretary, filed a claim for an emotional condition. She attributed her claimed emotional condition to having an increased work load due to an attendance problem of a coworker, her belief that her supervisor, Robert Schuster, was not qualified for his position, not receiving a job upgrade, having problems in communicating with Mr. Schuster and harassment¹ from another supervisor, Sergeant Eartley West who closely monitored appellant.

In an employing establishment health clinic report dated October 28, 1994, a Dr. Alvarez related that appellant felt lightheaded and nervous and was experiencing headaches. He related that appellant was having problems at work and he diagnosed anxiety.

In a statement dated December 15, 1994, one of appellant's coworkers, Richard Foster, related that Sgt. West had asked him to write a Report of Contact stating that appellant had failed to perform a particular task but that appellant was on sick leave when the task was to be performed.

In a statement, coworker Julie Franqui related that on December 16, 1994 Sgt. West asked her if she knew where appellant was and that she felt uncomfortable whenever Sgt. West asked her this question.

¹ Appellant alleged that she was noted as being off duty by Sgt. West during a time when she attended a baby shower for another employee. Appellant also alleged instances of sexual harassment from Sgt. West such as suggestive comments.

In a statement dated December 28, 1994, appellant stated that she had found copies of notes in Sgt. West's handwriting, which listed her arrival and departure times at work for several days. She indicated that she felt harassed by Sgt. West's recordkeeping.

In a report dated March 3, 1995, Dr. Tito Musacchio, a Board-certified surgeon, related that appellant was seen on October 31, 1994 for severe hypertension and related that she became nervous and tense while working. He provided findings on examination but did not provide an opinion as to the cause of the condition.

In a statement dated March 7, 1995, Sgt. West denied appellant's allegations. He noted that the new clerk referenced in appellant's allegations did have attendance and leave problems and he stated that appellant also had attendance problems.

In a statement dated March 10, 1995, regarding appellant's allegation that she had communication problems with him, Mr. Schuster stated that he was not always available when appellant wished to speak to him but that he always contacted appellant as soon as he was able.

By decision May 22, 1995, the Office of Workers' Compensation Programs denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish that her claimed emotional condition was causally related to compensable factors of her employment.

By letter dated June 5, 1995, appellant requested an oral hearing before an Office hearing representative.

On February 26, 1996 a hearing was held before an Office hearing representative at which time appellant testified. Included in her testimony was the information that she had filed two Equal Employment Opportunity Commission (EEO) complaints against Sgt. West but that the first complaint was closed without action and the second complaint she had agreed to withdraw in return for being reassigned. She also testified that she was not charged for being away without leave for the time that she attended a baby shower at work although Sgt. West initially recorded her as being off duty without leave.

By decision dated July 17, 1996, an Office hearing representative affirmed the Office's May 22, 1995 decision. The hearing representative found that appellant's increased work load imposed as a result of the attendance problems of her coworker was a compensable factor of federal employment but that the other allegations were not compensable. He further found that there was no medical evidence of record which established any employment factor as being the cause of appellant's claimed emotional condition.

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

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 employment factors.⁴ 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.⁵

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or 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.⁶ If a claimant does implicate a factor of employment, the Office 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.⁷

Regarding appellant's allegation that Sgt. West unreasonably monitored her activities at work, that she had trouble communicating with Mr. Schuster, that she was unfairly denied a job upgrade, and that Mr. Schuster was not qualified for his position, the Board finds that these allegations relate to administrative or personnel matters, are unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.⁸ Although such matters are generally related to the employment, these are administrative functions of the employer and not duties of the employee.⁹ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the

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

⁶ See *Margaret Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁷ *Id.*

⁸ 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).

⁹ *Id.*

evidence discloses error or abuse on the part of the employing establishment. In this case, Sgt. West stated that he monitored appellant's activities because she had an attendance problem and there is insufficient evidence that Sgt. West acted abusively in this regard. As for error in the monitoring of appellant's activities, the record shows that on one occasion, Sgt. West recorded appellant as being off duty without leave because he thought she had gone home when she was actually attending a baby shower at work. However, there is insufficient evidence that this was an error on the part of Sgt. West or whether appellant had failed to advise her supervisor that she would be attending the shower. In any event, the error was corrected and appellant was not charged with being absent without leave, and there is no medical evidence establishing that appellant's claimed condition was caused by this incident. Regarding appellant's allegation that she occasionally had trouble contacting Mr. Schuster, he stated that he was sometimes not available for appellant when she wanted to communicate with him but that he did respond to her concerns when he was able. There is no evidence of error or abuse regarding appellant's difficulties in contacting her supervisor. Regarding the denial of a job upgrade, there is insufficient evidence of error or abuse. Regarding the qualifications of Mr. Schuster for his supervisory position, there is insufficient evidence of error or abuse on the part of the employing establishment. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant has also alleged that harassment by Sgt. West 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. Mere perceptions of harassment or discrimination are not compensable under the Act.¹¹ In the present case, the employing establishment denied that appellant was subjected to harassment by Sgt. West and appellant has not submitted sufficient evidence to establish that she was harassed by him.¹² The two witness statements submitted by appellant's coworkers are not sufficient to establish that appellant was harassed by Sgt. West. They merely show that Sgt. West monitored appellant's activities and that he once believed that she had failed to complete a task but then learned that she was on sick leave when the task was to be performed. The EEO complaints filed by appellant were closed or withdrawn without any finding that Sgt. West had harassed appellant. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegation that her emotional condition was caused by an increased work load due to frequent absences of a coworker, the Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are

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

¹¹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹² *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).

compensable.¹³ In this case, the Office found that this was a compensable factor of employment. However, 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.¹⁴

In an employing establishment health clinic report dated October 28, 1994, Dr. Alvarez related that appellant was having problems at work but he did not provide a rationalized medical opinion explaining what specific incidents or situations were the cause of appellant's condition. Therefore, this report is not sufficient to discharge appellant's burden of proof.

In a report dated March 3, 1995, Dr. Musacchio, a Board-certified surgeon, related that appellant was seen on October 31, 1994 for severe hypertension and related that she became nervous and tense while working. He provided findings on examination but did not provide an opinion as to the specific incidents or situations causing appellant's condition. Therefore, this report is not sufficient to establish that appellant sustained an injury causally related to factors of her employment.

The July 17, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
March 12, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

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

¹⁴ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).