

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MAUREEN A. BECKWITH-SHIREY and U.S. POSTAL SERVICE,
GREATER MICHIGAN DISTRICT, Grand Rapids, Mich.

*Docket No. 97-1600; Submitted on the Record;
Issued March 22, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish that her emotional condition occurred in the performance of her federal employment.

By decision dated December 11, 1996, the Office of Workers' Compensation Programs found that appellant had not established that she sustained an emotional condition in the performance of duty. In the attached memorandum, the Office noted that the incidents alleged by appellant were administrative in nature and that she had not established abuse or harassment on the part of the employing establishment.

In a letter dated January 18, 1997, appellant requested reconsideration and submitted evidence in support of her claim.

By decision dated February 14, 1997, the Office denied appellant's request for modification of the prior decision. The Office found the evidence submitted with appellant's request to be duplicative or irrelevant and thus insufficient to modify the prior decision.

The Board has duly reviewed the case record and concludes that appellant has not established that she sustained a compensable emotional condition in the performance of her federal employment.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. When an employee experiences emotional stress in carrying out his employment duties or has fear and anxiety regarding his ability to carry out his duties, and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the performance of duty. The same result is reached when the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of the work. In contrast, a

disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Federal Employees' Compensation Act. Nor is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.¹

In cases involving emotional conditions, the Board has held that when working conditions are related as factors in causing a condition or disability, the Office must first as part of its adjudicatory function make findings of fact regarding which working conditions are deemed compensable factors of employment and which working conditions are not deemed factors of employment. Only if appellant has alleged a compensable factor of employment will the Office further review the medical evidence and evaluate the claim.²

In the present case, the Office denied appellant's claim by decisions dated December 11, 1996 and February 14, 1997 on the grounds that appellant had not established that her alleged emotional condition was sustained in the performance of her federal employment. In her allegations that she sustained an emotional condition due to factors of her federal employment appellant has alleged that she was harassed by her supervisors. The Board has previously stated that actions of an employee's superiors which the employee characterizes a harassment may constitute factors of employment giving rise to coverage under the Act.³ An employee's charge that he or she was harassed or discriminated against is not, however, determinative of whether or not harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.⁴

Appellant has alleged that she first encountered harassment at the employing establishment when Chester Cross became manager of Human Resources. Appellant alleged that Mr. Cross discriminated against her, threatened her and retaliated against her. Appellant alleged that at a staff meeting on February 12, 1996, Mr. Cross referred to himself as a black panther and that he was "watching certain 'Leopards'" in the unit and "Leopards do [not] change their spots." Appellant alleged that Mr. Cross had mentioned the possibility of a higher level detail to appellant, but assigned it to another individual after she filed an Equal Employment Opportunity (EEO) complaint against him. Appellant stated that she noted increased hostility by her supervisors and some fellow workers after she filed a formal EEO complaint against Mr. Cross. Appellant stated that she now started to receive formerly verbal information on post-it notes and buck slips and that the staff failed to keep her informed of where they were. Appellant also noted that she was not included in some training programs that other staff members attended. Appellant also stated that her breaks were being timed and that some staff forwarded their telephones to their voice mail instead of to her. Appellant stated that on Secretary's Day,

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

² *Curtis Hall*, 45 ECAB 316 (1994).

³ *Goldie K. Behymer*, 45 ECAB 508 (1994).

⁴ *Barbara J. Nicholson*, 45 ECAB 803 (1994).

April 25, 1996, she received no acknowledgments from any staff that day unlike previous years when she had been taken to lunch and given a gift. Appellant states that she was involuntarily assigned to another position by Mr. Cross without discussing the assignment with appellant or her supervisor. Appellant also alleges that she was denied a promotion, required to work two jobs and denied a higher pay rate when performing higher grade assignments.

While appellant has made allegations of harassment and retaliation by Mr. Cross and she was treated with increased hostility by her supervisors and some staff, she has not provided sufficient evidence to support any specific incident. Appellant has also alleged that she was required to perform two jobs in order to have career advancement, her breaks were being timed and was denied a higher pay rate when performing higher grade assignments. Appellant submitted various documents including a Postal Service bulletin dated August 31, 1995 regarding a policy statement on sexual orientation, a June 16, 1996 proposed notice of removal, a copy of EEOC instructions dated March 11, 1996, various personal notes, letters, news articles, appellant's bankruptcy filing, etc. None of these instances were corroborated by witness' statements or other trustworthy substantiating evidence. The Board has held that an action of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. However, for harassment to give rise to a compensable disability there must be evidence that harassment or discrimination did, in fact, occur.⁵ Mere perceptions or feelings of harassment do not constitute a compensable factor of employment. An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁶ To establish entitlement to benefits under the Act, the claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁷ As appellant has failed to submit corroborating witness' statements or other credible substantiating evidence of these incidents, she has failed to establish a factual basis for her claim of harassment.

The remainder of appellant's allegations are properly found to be noncompensable. Matters concerning promotion and assignment to another position are considered administrative duties of the employer rather than the duties of the employee, and are compensable only if there is evidence of error or abuse. In the present case, there is no evidence of record establishing error in the administrative matters pertaining to appellant's involuntary reassignment to another position or denial of a promotion. Thus, appellant has not established a compensable factor of employment.

Appellant also alleged that she was denied training that she believed was necessary and which other staff received. The Board has held that training, or a lack thereof, is an administrative matter, and is not compensable unless evidence of employing establishment error or abuse is submitted.⁸ In the present case, there is no indication that the employing

⁵ *Barbara J. Nicholson*, *supra* note 4; *Shiela Arbour (Vincent E. Arbour)*, 43 ECAB 779 (1992).

⁶ *William P. George*, 43 ECAB 1159 (1992).

⁷ *Anthony A. Zarcone*, 44 ECAB 751 (1993).

⁸ *Mildred D. Thomas*, 42 ECAB 888 (1991).

establishment acted unreasonably in not sending appellant to the training she thought she should have. Since no evidence of error or abuse was submitted or demonstrated, the employing establishment's failure to provide appellant with all the training she desired is not a compensable factor of employment.

The decisions of the Office of Workers' Compensation Programs dated February 14, 1997 and December 11, 1996 are affirmed.

Dated, Washington, D.C.
March 22, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member