

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHARON L. THURMAN and DEPARTMENT OF DEFENSE,
DEFENSE FINANCE & ACCOUNTING SERVICE, Indianapolis, Ind.

*Docket No. 97-2105; Submitted on the Record;
Issued May 13, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty.

On October 24, 1996 appellant, then a 29-year-old military pay technician, filed an occupational disease claim alleging that she sustained stress with mild depression as a result of her federal employment. Appellant noted that she first realized that her emotional condition was caused or aggravated by her employment on April 29, 1996. Appellant reported that she was detailed to the division of military pay, and while management had not wanted her to go, her director informed them that they did not have any justification to deny the detail. According to appellant "after a few months of being in the area my life became a living hell. I was being harassed, yelled at, discriminated against and all my rights were violated."

In support of her claim, appellant submitted treatment notes from Dr. Robert C. Collins, an internist, excusing her from work for the periods of May 3 to 11, 1996 and May 13 to 19, 1996 due to anxiety.¹

In a treatment note dated July 25, 1996, Dr. Jack E. Thomas, a clinical psychologist, indicated that he had examined appellant on that date, noted that she was experiencing significant acute stress at work and diagnosed mild to moderate depression. Dr. Thomas did not elaborate on the specific conditions at work which appellant reported as being stressful. He recommended that appellant take a four-day leave of absence from work followed by weekly counseling sessions.

¹ Appellant also submitted treatment notes that either failed to address an emotional condition or failed to provide a diagnosis, other than stating that appellant had "a procedure," "diagnostic testing" or "surgery" without further explanation.

In an August 19, 1996 report, Dr. Thomas identified appellant's functional restrictions and diagnosed an adjustment disorder with depressed mood of moderate severity. He noted that appellant may have difficulty remembering details, maintaining attention concentration for extensive periods of time, and difficulty interacting with her supervisor, as "she feels undue pressure and annoyance from her direct supervisor."

Personnel records from the employing establishment documented appellant's use of approximately 350 hours of leave for the period of January through June 1996. Appellant also submitted leave totals for her absences from work from May 2 through September 27, 1996, noting that "all this leave is due to stress from my job. I was denied and [threatened] by [Office of Military Pay] to stop requesting the stress leave under [Family Medical Leave Act]."

By letter dated November 18, 1996, the Office requested that appellant provide additional factual and medical evidence to support her claim.

In a statement dated January 3, 1997, appellant alleged that her rights had been violated, and that she was being treated worse than a person who murdered someone simply because she wrote to her congressman. Appellant also stated that "everyone is refusing to hear me out" and that the Union ignored 23 of her grievances, "which is the reason I got my suspension." She described herself as being set up because "the rules and regulations speak for themselves." Appellant noted that she had been with the federal government for five years and has received exceptional ratings, never being written up. She further stated that her stress condition was directly related to her job because she was unfairly treated and discriminated against for whistle-blowing. According to appellant, her complaints have been ignored and she has been denied redress by "all agencies."

In a memorandum dated January 29, 1997, appellant's supervisor indicated that appellant had been treated fairly and equally, and that appellant was under no more than normal work stresses during her tenure. Appellant's supervisor further noted that appellant had refused suggested accommodations to aid in the resolution of her medical situation.

In a decision dated March 17, 1997, the Office denied appellant's claim for compensation on the grounds that evidence of record failed to show that appellant's emotional condition arose out of her federal employment. Specifically, the Office determined that appellant submitted insufficient factual information to establish the specific employment incidents she was claiming as causing to her emotional condition.

The Board finds that appellant has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.²

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

² Although appellant submitted additional evidence on appeal, the Board does not have jurisdiction to review evidence that was not before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c).

of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.³

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he or 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 the instant case, appellant alleged that her emotional condition of stress with mild depression was due to a combination of harassment and discrimination she experienced for whistle-blowing. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors or coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.⁶ Appellant, however, has failed to submit specific evidence of harassment such as identifying the dates, times, places and persons involved, including witnesses of any wrongdoing, and the nature of the harassment. Appellant likewise has failed to provide any details of the whistle-blowing incident to which she refers, nor the manner in which she has been discriminated against by the employing establishment.⁷ For this reason appellant's allegations are not sufficient to establish a compensable factor of harassment or discrimination. Instead, appellant's supervisor indicated that appellant was treated fairly and that he sought to accommodate appellant's needs.

The Board has held that mere feelings alone and unfounded perceptions of harassment or discrimination do not constitute compensable employment factors under the Act,⁸ and that harassment can only constitute a factor of employment if it is demonstrated that the incidents

³ *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 *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁷ Appellant alleges that the Union failed to address the 23 grievances she filed, and that she has been denied proper redress from OSC and "all agencies." The Board notes that stress or frustration resulting from failure to obtain appropriate redress or corrective actions from other administrative agencies with which complaints may be filed against the employing establishment are not covered by the Act. While specific charges in complaints filed against the employing establishment may constitute compensable employment factors, the actions of the particular administrative agencies, in reviewing and investigating the charges and rendering a decision thereon, do not have any relationship to the employee's assigned duties. *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁸ See *Kathleen D. Walker*, *supra* note 6.

constituting the claim of harassment actually occurred. Because the case record does not contain evidence to substantiate appellant's general allegations of harassment and discrimination on the part of the employing establishment, the Board finds that appellant has not established a factor of employment compensable under the Act. Likewise, appellant's general dissatisfaction with a job detail, by itself, is not compensable and essentially relates to a desire to work in a particular environment.⁹ Inasmuch as appellant has not established any compensable employment factors under the Act, she has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁰

Accordingly, the decision of the Office of Workers' Compensation Programs dated March 17, 1997 is hereby affirmed.

Dated, Washington, D.C.
May 13, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ See *Lillian Cutler*, *supra* note 3; see also *Mary Margaret Grant*, 48 ECAB____ (Docket No. 95-3043, issued September 25, 1997) (where claimant did not specifically relate her apprehension to being unable to perform specific work duties, her reassignment was not compensable).

¹⁰ As appellant has failed to allege a compensable factor of employment substantiated by the record, the medical evidence need not be discussed; see *Margaret S. Krzycki*, 43 ECAB 496 (1992).