

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HELEN M. BURROWS and DEPARTMENT OF THE ARMY,  
AVIATION REGIMENT, Fort Rucker, Ala.

*Docket No. 97-2366; Submitted on the Record;  
Issued May 10, 1999*

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DECISION and ORDER

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

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

The Board finds that appellant did not meet 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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> This burden includes the submission of a detailed

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>4</sup>

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 of Workers' Compensation Programs 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> 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.<sup>6</sup>

In the present case, appellant sustained an employment-related lumbosacral strain on May 11, 1995 when she fell while sitting down in a chair with a cushion which was not adequately strapped to the frame of the chair.<sup>7</sup> On October 28, 1996 appellant filed a claim alleging that she sustained an employment-related emotional condition; she indicated that she first became aware of the condition on May 11, 1995. Regarding the relationship of the condition to her employment, appellant stated, "I feel wholeheartedly that someone intentionally moved the cushion from that chair for me to fall and get hurt." By decision dated November 21, 1996, the Office denied appellant's emotional condition claim in the grounds that she did not establish any compensable employment factors and, by decision dated April 23, 1997, the Office denied modification of its November 21, 1996 decision. The Board must, thus, initially review whether any alleged incident or condition of employment is a covered employment factor under the terms of the Act.

Appellant alleged that she was harassed by a coworker who altered a cushion on a chair in a manner which caused her to fall when she attempted to sit on the chair on May 11, 1995. To the extent that disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.<sup>8</sup> However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.<sup>9</sup> In the present case, appellant has not submitted sufficient evidence to establish that she was harassed by a coworker in the manner

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<sup>4</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>5</sup> *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>6</sup> *Id.*

<sup>7</sup> Appellant stopped work on May 11, 1995 and did not return to work.

<sup>8</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>9</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

alleged.<sup>10</sup> Appellant alleged that a coworker engaged in an action, *i.e.*, sabotaging the chair in which she attempted to sit on May 11, 1995, that she believed constituted harassment, but she provided no corroborating evidence, such as witness statements, to establish that the alleged action actually occurred.<sup>11</sup> Appellant did not elaborate on the reasons for her belief that a coworker altered the chair with an intention to cause her injury or otherwise clarify the factual basis for her claim in this regard. Thus, appellant has not established a compensable employment factor under the Act with respect to her claim of harassment.

The record contains reports, dated October 3 and December 27, 1996, in which Dr. David Moyerman, an attending clinical psychologist, related appellant's emotional condition to chronic pain and functional impairments related to her May 11, 1995 employment injury. The Board has held that an emotional condition related to chronic pain and limitations resulting from an employment injury is covered under the Act.<sup>12</sup> The Board notes, however, that the record does not contain any clear statement of appellant relating her claimed emotional condition to pain or limitations from her May 11, 1995 employment injury. As noted above, appellant's burden to prove the existence of an employment-related emotional condition includes submission of a detailed description of the employment factors or conditions which she believes caused or adversely affected the condition or conditions for which compensation is claimed. Such a detailed description would be especially necessary in the present case, given the history of appellant's May 11, 1995 injury. The Office had terminated appellant's compensation effective January 16, 1996 on the grounds that she no longer had residuals of her May 11, 1995 injury after that date. The Office based its termination on the opinion of Dr. Jose C. Serrato, Jr., an attending orthopedic surgeon, who indicated in November 1995 that appellant could return to regular duty.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.<sup>13</sup>

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<sup>10</sup> 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).

<sup>11</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>12</sup> See *Arnold A. Alley*, 44 ECAB 912, 921-22 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).

<sup>13</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The decisions of the Office of Workers' Compensation Programs dated April 23, 1997 and November 21, 1996 are affirmed.

Dated, Washington, D.C.  
May 10, 1999

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member