

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL WOLFF and DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS, Walla Walla, WA

*Docket No. 98-413; Submitted on the Record;
Issued November 26, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

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

In the present case, appellant, a public affairs specialist, filed a claim alleging that she sustained an emotional condition causally related to her federal employment. Appellant stated that "excessive pressures placed on me by my job duties and my superiors" contributed to her condition. In response to a request for additional information regarding her claim, appellant submitted a statement that had been filed with a complaint before the Equal Employment Opportunity Commission (EEOC). The statement contains numerous allegations that appellant was discriminated against because of age, gender and disability.

By decision dated November 6, 1995, the Office of Workers' Compensation Programs denied the claim. In a decision dated January 18, 1996, an Office hearing representative remanded the case for proper findings of fact. By decision dated July 17, 1996, the Office denied the claim on the grounds that fact of injury had not been established. In a decision dated September 27, 1997, the Office reviewed the case on its merits and denied modification of the denial of the claim.

The Board has reviewed the record and finds that appellant has not established that she sustained an emotional condition in the performance of duty.

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 factors of her federal employment.¹ To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to

¹ Pamela R. Rice, 38 ECAB 838 (1987).

her condition; (2) 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.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 of the law. These injuries occur in the course of the 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 or her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³

On her claim form appellant stated that she had pressure placed on her by her job duties, but she did not clearly explain how her regular or specially job duties contributed to an emotional condition. Appellant responded to the Office's request for additional information by submitting statements submitted as part of her EEOC complaint, containing allegations of discrimination based on age, gender and disability. None of the evidence of record, however, establishes a claim based on discrimination. The only findings are contained in a report of investigation by the employing establishment's Office of Complaint Investigations. This report concludes that appellant failed to establish that her sex, age, or physical or mental handicaps were motivating factors in any of the actions under investigation. Moreover, there is no probative evidence of record supporting a claim based on discrimination in this case. For example, appellant submitted memorandums from her supervisor regarding use of sick leave and the time period for performance appraisals, but these memorandums do not constitute evidence supporting discrimination or harassment. The allegations of harassment and discrimination are not supported by EEOC findings, witness statements, or other probative evidence that is sufficient to establish an emotional condition claim based on discrimination or harassment. The Board accordingly finds that appellant has not substantiated a compensable factor of employment as contributing to her condition. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.⁴

² See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

The decision of the Office of Workers' Compensation Programs dated September 27, 1997 is affirmed.

Dated, Washington, D.C.
November 26, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member