

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TONIA M. HUDGINS and DEPARTMENT OF THE NAVY,
CORY STATION, Pensacola, FL

*Docket No. 97-1870; Submitted on the Record;
Issued September 17, 1999*

DECISION and ORDER

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

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

On May 2, 1994 appellant, then a 31-year-old military personnel clerk, filed an occupational disease claim alleging that she sustained an emotional condition which she attributed to factors of her federal employment. In various statements, she attributed her claimed emotional condition to: being placed in a different position which was too demanding, having her medical restriction violated by the employing establishment, being harassed regarding her requests for leave, being issued a letter of caution concerning unauthorized absence and failure to follow proper procedure when requesting absence from duty, having the employing establishment contact her physician to clarify one of her medical excuses and to ask if there were any work limitations regarding her migraine headaches, being told by a supervisor that she could not receive administrative leave to donate blood during a blood drive, receiving a performance appraisal with which she was dissatisfied, being told by supervisors to stop "bitching" about her job, and having her personal effects removed from her desk and placed in safekeeping while she was out of work from November 1993 through February 1994 and again on May 25, 1994 when she was removed from her position.

In a report dated October 5, 1993, Dr. Louis J. Perillo, Board-certified psychiatrist, related that he first saw appellant at a psychiatric hospital on August 24, 1993 and that she described "a great deal of work stress." He diagnosed major depression and noted that she desired a reassignment to a less stressful position.

In a memorandum dated July 26, 1994, Lt. Rose White, head of the employing establishment's workers' compensation branch, stated that appellant was removed from her position in the identification card office because she refused to accept responsibility for securing the identification cards at the end of the day as it was her duty. She stated that appellant was transferred to a position which management felt she could perform successfully. Lt. White denied that she ever told appellant to "stop bitching" about her duties. She noted that appellant had expressed concern about a back condition which she felt could affect her job performance

but there was no documentation in her job file with any mention of a back condition. Lt. White stated that appellant was asked to provide documentation of her back condition and, in the meantime, she was given assistance with her job but that she never provided the requested medical documentation specifying her work limitations. Regarding the allegation of management harassing appellant regarding her migraine headaches, she stated that appellant had never provided medical documentation regarding the headaches and that the employing establishment had contacted her physicians in order to obtain the needed information and, on one occasion, had asked a doctor to clarify a medical excuse. Lt. White stated that appellant frequently requested leave without pay, often at the last minute, and that other workers then had to be transferred to perform appellant's tasks. She noted that appellant had requested training but never made herself available for training but, in any event, the training for the position would have been minimal. She stated that management had never harassed appellant but had merely tried to obtain necessary documentation.

In a memorandum dated July 29, 1994, Kent W. Stoltz, a supervisor, denied that he tried to give appellant "a hard time" by lowering her yearly evaluation and noted that her evaluation remained consistent with previous ratings. Mr. Stoltz noted that he had incorrectly signed an appraisal for the period ending June 30, 1992 as he was not appellant's supervisor for more than 90 days and that appellant had initiated a grievance but, after her previous supervisor signed a memorandum that stated that he agreed with the rating, appellant withdrew her grievance. He noted that appellant had submitted recommendations for greater efficiency in the employing establishment which were approved and adopted and that she had received a cash award for the recommendations but the adopted changes eliminated the need for her position and, because of this, she was transferred to another position. Mr. Stoltz denied appellant's allegation that she was forced to take two weeks leave without pay because of the pain and stress caused by her reassignment. He stated that appellant had admitted that she hurt her back while dancing in high heels during a sea cruise. Mr. Stoltz stated that he had spoken to appellant about her being absent without leave but had not harassed her about this. He stated that appellant's personal effects were placed in safekeeping in November 1993 after she had been absent for nearly three months and had refused to comply with a return to duty order. Mr. Stoltz stated that when appellant returned to work in February 1994 her personal effects were returned to her. He noted that appellant last reported to work on May 19, 1994 and that on May 25, 1994, when she was removed from her position, her personal effects were again inventoried and placed in safekeeping. Mr. Stoltz noted that appellant claimed that she was unable to work but, in her application for unemployment compensation benefits from the state, she claimed she was able and available to work.

In a memorandum dated July 29, 1994, Lt. Commander Patricia Tezak stated that on August 23, 1993, appellant came to her office and expressed anger because Senior Chief Crabtree would not grant her administrative leave to donate blood on August 24, 1993. She stated that she spent 45 minutes talking to appellant and explained to her that in the future she could deal with her and told her that all employees were given administrative time to donate blood, that appellant was no exception, and that she would personally inform Chief Crabtree of this fact. Lt. Tezak stated that appellant seemed shocked that she had agreed so quickly and then started yelling and crying saying she could not deal with Chief Crabtree any longer. She stated that she tried to calm appellant down but that she became angry and left to go home. Lt. Tezak stated that she took her meeting with appellant seriously and at no time did she laugh at appellant.

In a memorandum dated July 29, 1994, Chief Crabtree stated that the reason appellant was removed from her position in the identification card section was that she was negligent in securing identification cards and that appellant grieved this change through Equal Employment Opportunity Commission (EEOC) procedures but that no discrimination was found after formal hearing procedures were held. He stated that when appellant told him she had a history of back problems he immediately told appellant not to pull any records from the files or do anything to risk injury and that he then reviewed her personnel file but found no documentation of back injury or job limitations. Chief Crabtree stated that he informed appellant that she would need to provide documentation of her back injuries or job limitations but she never provided the requested documentation. He noted that a compensation claim for a back injury on April 26, 1993 was denied. Chief Crabtree denied that he had ever told her to stop "bitching" about her job but that he did issue a letter of caution dated June 11, 1993 regarding her unauthorized absences and failure to follow proper procedures when requesting absence from duty. He denied that on August 23, 1993 he was loud and obscene in his manner in questioning appellant regarding her request for leave to donate blood. Chief Crabtree denied harassing appellant about her attendance. He stated that there was no more stress placed on appellant than on any other employee.

In a memorandum dated August 4, 1994, Supervisor R.S. Woolf provided a description of appellant's job duties and stated that her duties were far less stressful than any other employee in her section. Mr. Woolf noted that appellant was only working four hours a day as compared to the eight hours worked by other employees. He stated that he never demanded that appellant meet deadlines and insisted that she take as long as necessary to complete any task. Mr. Woolf stated that appellant had an attendance and disciplinary problem and that her dismissal from the employing establishment was based only on absenteeism and her recurring disciplinary infractions.

By decision dated November 29, 1994, 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 she had sustained an emotional condition in the performance of duty.

By letter dated January 20, 1995, appellant requested reconsideration of the denial of her claim and submitted additional medical evidence.

In a report dated August 24, 1993, Dr. Perillo related that appellant complained of job stress for the past three years. He related that appellant complained that every time she made a request at work it was denied and she provided, as an example, her request for leave to donate blood. Dr. Perillo related that her supervisor was yelling at her in front of others when she made this request. He provided findings on examination and diagnosed major depression. Dr. Perillo did not provide his opinion as to the cause of appellant's depression.

By decision dated April 17, 1995, the Office denied modification of its November 29, 1994 decision.

By letter dated April 17, 1996, through her representative, appellant requested reconsideration of the denial of her claim.

Appellant submitted a copy of an October 6, 1995 settlement agreement between appellant and the employing establishment regarding her appeal to the Merit Systems Protection

Board (MSPB) about the denial of her application for disability retirement. The administrative judge who dismissed the case following the settlement agreement, noted that she did not have jurisdiction to review the merits of appellant's complaint against the employing establishment concerning her disability retirement application as the case had been settled by the parties.

By decision dated January 9, 1997, the Office denied modification of its prior decisions on the grounds that the evidence of record failed to establish that appellant sustained an emotional condition causally related to compensable factors of employment.¹

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 his 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

¹ The Board notes that subsequent to the issuance of the Office's January 9, 1997 decision, the Office received additional evidence. The Board does not have jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

² 5 U.S.C. §§ 8101-8193.

³ *See Thomas D. McEuen*, 41 ECAB 387, 391 (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 (1993).

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

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁷

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that the employing establishment issued a letter regarding her unauthorized absences and failure to follow proper procedure in requesting leave, contacted her physician to clarify a medical excuse and ask if appellant had any work restrictions, initially denied a request for leave to donate blood, issued a performance evaluation with which appellant was dissatisfied, and placed appellant's personal items in storage during her absences, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.⁸ Although such administrative matters are generally related to the employment, they 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 evidence discloses error or abuse on the part of the employing establishment.¹⁰ In this case, the employing establishment explained the reasons for the manner in which it handled these various administrative or personnel matters and appellant has submitted insufficient evidence to establish error or abuse regarding these allegations. Regarding the August 23, 1993 incident when Chief Crabtree denied appellant's request for leave to donate blood, the record shows that another supervisor indicated that Chief Crabtree should have granted appellant's request and that the leave request was later granted on that same day. The record shows that the error regarding appellant's request for administrative leave to donate blood was corrected shortly after it occurred. Considering the circumstances, the Board finds that this possible error by Chief Crabtree does not rise to the level of a compensable factor of employment. The Board finds that appellant has not established a compensable employment factor under the Act regarding her allegation of error or abuse in the employing establishment's handling of administrative or personnel matters.

Appellant has also alleged that harassment and discrimination on the part of her supervisors contributed to her claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.¹¹ 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.¹²

⁷ *Id.*

⁸ See *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹² *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors.¹³ Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant also alleged that she was placed in a position which was too demanding. The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.¹⁴ However, appellant has provided insufficient evidence that she was having difficulty performing her tasks or that her job duties were too demanding and her supervisors denied that her job was difficult, noting also that she was not required to meet any deadlines in performing her tasks. Therefore, this allegation is not deemed a compensable factor of employment.

Regarding appellant's allegation that the employing establishment violated her work restrictions pertaining to a back condition and migraine headaches, the Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.¹⁵ However, in this case, appellant has provided insufficient evidence that the employing establishment violated any work limitations. The record shows that appellant was asked by the employing establishment to provide documentation of her alleged work restrictions but this documentation was not provided. Therefore this allegation that the employing establishment did not honor work restrictions is not deemed a compensable factor of employment.

Appellant submitted evidence that she reached a settlement agreement with the employing establishment regarding her application for disability retirement. Under this agreement, appellant's application for disability retirement was accepted. However, this agreement does not establish that appellant sustained an employment-related disability under the Act. Approval of a disability claim by another federal agency under its rules and regulations is not determinative of a claimant's entitlement to compensation under the Act.¹⁶

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.¹⁷

The January 9, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.

¹³ 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).

¹⁴ See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

¹⁵ *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

¹⁶ See *Daniel Deparini*, 44 ECAB 657, 660 (1993).

¹⁷ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, *supra* note 6 at 502-03.

September 17, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member