

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EUNICE M. STEWARD and DEPARTMENT OF THE ARMY,
WOMACK ARMY MEDICAL CENTER, Fort Bragg, NC

*Docket No. 98-2275; Submitted on the Record;
Issued April 24, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant sustained an emotional condition in the performance of duty.

On May 7, 1996 appellant, then a 35-year-old licensed practical nurse, filed a claim for psychological stress. She attributed her condition to a new supervisor, Sergeant Yvonne Hicks, contending that Sgt. Hicks harassed her, causing mental stress and a flare-up of her prior low back condition. In an accompanying statement, appellant indicated that she had sustained a back injury at work which required surgery. She returned to work on July 1, 1995 with restrictions of working no more than 8 hours a day and no lifting over 30 pounds. She indicated that she worked with no problems through January 1996.¹ She related that on March 6, 1996, while walking down the hall with Sgt. Hicks and a captain, appellant indicated that she could not keep up the pace because of her back condition. The captain told appellant to walk at her own pace. Appellant indicated that when she reached Sgt. Hicks office, she asked whether the sergeant was aware of her condition. Sgt. Hicks responded that she did not care. Appellant also asked Sgt. Hicks while her request for advance days off, which had been entered in the paraprofessional request book, had been denied as unacceptable. The sergeant responded that Major Flavia Diaz-Hayes had questioned the entries in the book. She also told appellant that if appellant kept asking for days off, she would have to put appellant on for three or four 12-hour days in a row. Appellant indicated that she took the issue to Major Diaz-Hayes who stated that Sgt. Hicks had brought the issue to her attention because appellant had used a piece of tape and then wrote in the book to cover a mistake. The major commented that she did not like to look at the request book because she only worked with the schedule for registered nurses. Major Diaz-Hayes arranged a meeting in her office between appellant and Sgt. Hicks. Appellant complained that she was not being treated with compassion, concern or caring. She noted that

¹ Appellant noted that her nephew had been murdered on October 26, 1995 she and her husband had taken custody of the other children of her sister by January 1996.

Sgt. Hicks told her to shut up, because she had the last word. Major Diaz-Hayes urged both appellant and the sergeant to calm down. Appellant stated that Sgt. Hicks agreed to let bygones be bygones and promised not to nitpick appellant or cause her problems. Appellant noted that Sgt. Hicks refused to apologize, stating that she did not care if appellant or anyone on the ward cared for her.

Appellant indicated that on March 7, 1996, while on her break, she asked two nurses and the major whether they wanted anything from downstairs and returned with tea for the nurses and a soft drink for the major. Appellant then went back down stairs with a coworker, Gwen Carter. She noted that the next day Sgt. Kingsley Williams, the acting supervisor, indicated Sgt. Hicks had scolded him for letting appellant leave the ward the day before without telling anyone. Appellant protested and brought the matter to the attention of Major Diaz-Hayes and one of the nurses.

Appellant related that on April 9, 1996, in a training session, military and civilian personnel were at one point instructed to pair off. Appellant noted that Sgt. Hicks refused to pair with the only remaining civilian, Ms. Carter, and walked out of the training session.

Later that day, appellant checked the schedule and found she had been scheduled to work night shift for three consecutive nights with two 12-hour shifts and one 8-hour shift. Appellant indicated that she was restricted from working night shifts. She complained to Major Diaz-Hayes who instructed her to take up the matter with Sgt. Hicks. Sgt. Hicks stated that Sgt. Santiago had made out the schedules for that week and indicated that she would see what she could do. Appellant talked with Sgt. Santiago on April 10, 1996 and reported that Sgt. Santiago stated that she had not put appellant on night shifts but had given her day shifts. Appellant related that Sgt. Santiago indicated that Sgt. Hicks had put appellant on night shifts, stating that appellant was messing up the schedule. Appellant indicated that Sgt. Santiago showed the paperwork to her. Appellant indicated that both she and Sgt. Santiago reported the matter to Major Diaz-Hayes.

Appellant stated that her coworker, Ms. Carter, informed her that her supervisor had indicated that Sgt. Hicks did not want Ms. Carter to come into appellant's unit, stating that Ms. Carter kept appellant from doing her work. Appellant commented that she only saw Ms. Carter on breaks and at lunch. She contended that Sgt. Hicks' approach was part of a pattern of harassment.

Appellant related that on April 10, 1996 Sgt. Hicks stated that she had inspected the rooms of patients that appellant attended and found them a mess. Appellant replied that she would clean up the mess. She noted that she was one of the team leaders in the employing establishment and indicated that Sgt. Hicks did not check the rooms of the other team leader. She had a meeting with Sgt. Hicks, Major Diaz-Hayes and Master Sgt. Carmen Amador-Stanley who assured appellant that the employing establishment cared about its employees and should consider requests for time off for their families.

Appellant indicated that on April 11, 1996 she called in sick to the information desk and her floor without a problem. On April 12, 1996 she talked to Major Diaz-Hayes, complaining of diarrhea, nausea, severe migraine headaches and depression. She stated that she would not be

able to work and would use sick leave on Saturday, April 13, 1996. The major indicated that appellant could take two to three days off if she needed. Appellant responded that she would take it one day at a time. On April 13, 1996 a coworker called appellant and asked if she knew she was to be at work. In response, appellant described her conversation with Major Diaz-Hayes. When appellant returned to work on April 14, 1996 she was informed that Sgt. Hicks had instructed a nurse to write appellant up as absent without leave. Appellant indicated that she began to feel emotionally disturbed, sick, intimidated and humiliated. She developed a migraine headache and severe backache and had to go home, sick.

Appellant indicated that on April 17, 1996 Sgt. Hicks, while giving instructions to several workers, added that if another spouse or dependent brought in a workers' green identification (ID) tag, the worker would be disciplined. Appellant commented that Sgt. Hicks was actually addressing her because she was the only worker whose husband or son had brought her ID tag when she forgot it at home.

Appellant related that later that day, she had a meeting with Sgt. Hicks and Major Diaz-Hayes. Sgt. Hicks explained that she had written appellant up as not showing for work on April 13, 1996 and had not called in to report. Appellant replied that she had informed Major Diaz-Hayes the day before that she would not be at work due to illness. The major recalled the conversation but, because she and appellant had discussed so many items, she had not remembered the sick leave request. The major apologized to appellant. Appellant refused to sign Sgt. Hicks' report but Major Diaz-Hayes instructed her to do so. Appellant indicated that she became distressed, upset and depressed and had to leave the employing establishment.

Appellant stated that on April 22, 1996 she was caring for a patient in the recovery room. She indicated that the patient did not want one particular nurse to work on her case and requested another nurse by name. Appellant relayed the request to the first nurse who became very upset with appellant. Appellant pointed out that the patient had the right to request a specific nurse. Appellant indicated that she entered appellant's request in the nurse's notes and the second nurse took over care of the patient. Appellant indicated that the next day Major Diaz-Hayes spoke with her. The major indicated that she had spoken with the patient but informed appellant that she had charted information on appellant's records that should not have been reported. Appellant protested but the major indicated that what appellant had written was inappropriate and informed appellant that she would be sent to a documentation class. Appellant indicated that she was extremely humiliated by this action. She stopped working that day.

In an undated statement, received by the Office of Workers' Compensation Programs on October 10, 1996, Sgt. Hicks denied that she had ever told appellant to shut up. She indicated that she had told appellant to be quiet because appellant was constantly interrupting her. She commented that when appellant complained on March 6, 1996 that the sergeant was not taking into account appellant's family difficulties, she replied that appellant's personal problems could not be considered if it interfered with ensuring that the employing establishment had sufficient coverage for the patients at the employing establishment. She noted that she would work with appellant but stated that appellant's requests could not be excessive and the requests of other employee's had to be considered. She noted that written procedures required appellant to inform the shift leader if she left the floor. Master Sergeant Amador-Stanley, in the same

statement, noted that it had been reported that appellant and Ms. Carter spent considerable time socializing in hallways and she instructed supervisors to put a stop to it. She noted that the green ID tags were a safety measure to stop infant abduction by identifying the only personnel authorized to handle infants. She indicated that the tags were to be signed out and turned in every day. She stated that appellant had failed to turn her tag and had it delivered by her son. She noted that Major Diaz-Hayes had failed to inform Sgt. Hicks of appellant's call about illness but stated that this incident occurred because appellant refused to follow the chain of command and the appropriate regulations on calling in to use sick leave. Major Diaz-Hayes indicated that she recalled appellant calling her to state that she was unable to work because of migraine headaches, which she attributed to the April 10, 1996 meeting with Sgt. Hicks. The major admitted that she failed to inform Sgt. Hicks of the conversation. She stated that, in a subsequent telephone conversation, appellant asked her to remember that she had specifically indicated that she was calling to request sick leave for April 13, 1996. Major Diaz-Hayes noted that she informed appellant that she could not recall that part of the conversation. In regard to shift assignments, the master sergeant indicated that Sgt. Santiago was being trained to do the scheduling. She indicated that, while employees had preferred shifts, the administration of the employing establishment was not bound by these preferences but by the needs of the employing establishment. Master Sergeant Amador-Stanley indicated that in the incident involving a patient's request, appellant was appropriately counseled for violating a patient's privacy.

In a November 4, 1996 decision, the Office denied appellant's claim on the grounds that evidence of record failed to demonstrate that the claimed injury occurred in the performance of duty.

In a November 30, 1996 letter, appellant requested a hearing before an Office hearing representative, which was held on July 17, 1997. In an April 15, 1998 decision, the Office hearing representative found that appellant had failed to show that she was subjected to abusive treatment by the employing establishment. He indicated that many matters on which appellant raised complaints involved administrative actions of the employing establishment and appellant's superiors. The hearing representative found that appellant had not established error or abuse in the employing establishment's actions. He concluded that appellant had failed to establish a factual basis for her claim. He, therefore, affirmed the Office's November 4, 1996 decision.

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

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. 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 his frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job

do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.² When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.³ In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.⁴

Appellant's claim was based on numerous incidents involving her interaction with Sgt. Hicks. However, these incidents arose from such matters as appellant's request for leave for family matters, a perceived failure to report when she was leaving the employing establishment floor, to which she was assigned, scheduling of shifts and her effort to request sick leave for April 13, 1996, as well as the perceived rebuke for having her husband or son bring in her green ID badge. Appellant also noted the verbal reprimand she received for what she wrote on a patient's chart. All these matters relate to administrative actions of the employing establishment. The matters do not pertain to appellant's assigned duties. Therefore, appellant cannot show these matters to be compensable factors of employment unless she establishes that the actions of her superiors were in error or abusive. Appellant has not made that showing here. The decisions of whether to grant appellant leave were within the discretion of her supervisors, particularly Sgt. Hicks. There is no showing that Sgt. Hicks arbitrarily denied leave to appellant. Major Diaz-Hayes admitted that she failed to inform Sgt. Hicks that appellant had called her to report she was ill. However, the major did not recall appellant specifically indicated that she would take sick leave on April 13, 1996. The record showed appellant did not adhere to the employing establishment procedures for requesting sick leave. Therefore, the record does not establish that the failure to give appellant sick leave for April 13, 1996 was an error on the part of the employing establishment. Appellant stated that she was not to work night shifts. The record did not contain any medical restriction against working night shifts during the period in question. Therefore, the employing establishment had discretion in scheduling appellant's shifts. Appellant contended that, on several occasions, Sgt. Hicks lied to her or about her, particularly in regard to shift assignments. However, she has not submitted any evidence other than her own statements to substantiate her claim that Sgt. Hicks lied. She also has not demonstrated that the reprimand she received for writing on a patient's chart a personal request for a specific nurse was in error.

Appellant made a general allegation that her emotional condition was due to harassment by her supervisors. The actions of a supervisor which an employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act. However, there

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

⁴ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.⁵ In this case, appellant cited many examples of actions by Sgt. Hicks which she regarded as harassment. However, there is no collaborative evidence to show that Sgt. Hicks was abusive to appellant verbally or treated her in any fashion that would be characterized as harassment. Appellant, therefore, has not established that the employment factors she cited as the cause of her emotional condition were compensable factors of employment.

The decision of the Office of Workers' Compensation Programs, dated April 15, 1998, is hereby affirmed.

Dated, Washington, D.C.
April 24, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁵ *Joan Juanita Greene*, 41 ECAB 760 (1990).