

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHYLLIS A. DAWS and DEPARTMENT OF THE NAVY,
NAVAL STATION SECURITY DEPARTMENT, Pascagoula, MS

*Docket No. 99-952; Submitted on the Record;
Issued December 5, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that she developed an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

On June 12, 1995 appellant, then a 57-year-old police officer, filed a claim alleging that she developed attention deficit and hyperactivity disorder, and adjustment disorder, due to harassment and retaliation by her supervisor and discrimination due to her age.

Appellant alleged that nothing she did was good enough, that her supervisor, Sergeant William M. Manning, suggested to her that she had Alzheimer's disease, accused her of having memory problems, screamed at her and denied her requests for leave, training and truck driving. She alleged that Sergeant Manning told others that she was stupid, that he bullied her in front of others, that he made her look forgetful, that he wrote her up for removing her hat and he refused her request for special training to qualify with a 9 millimeter (mm) weapon.

Appellant claimed that she had filed several Equal Employment Opportunity (EEO) complaints, that her condition began between August 1992 and April 1993 when an investigative report documented discrimination and abusive treatment towards her, that there was a hostile work environment in the security department which caused two female officers to resign and that she was exposed to filthy language in the dispatch room.

Sergeant Manning stated that on January 31 and February 7, 1994 appellant forgot to turn in her weapon when she went to work out at the gym, despite his requests. When asked about it, appellant stated that she forgot she had it on. He added that she "seemed to have trouble remembering things" and related on March 7, 1994 appellant was advised that a tug boat had run into a bigger ship, but later had to ask what kind of boat it was.

Sergeant Glen Davis issued appellant a letter of caution indicating that on February 2, 1995 appellant failed to make required identification (ID) entries into a desk journal and failed to report a gas leak to the commanding officer. He added that Sergeant Manning was positive and professional when counseling or training appellant and everyone else.

In a March 16, 1994 memorandum Sergeant Joe L. Betts, Jr., another security officer, stated that appellant had been assigned to him from August 1992 to January 1994, that she told him she had never been trained, that other officers spent many hours trying to teach her job fundamentals, but that she was difficult to teach because she could not retain the information and required close supervision.

Multiple statements were provided by Lieutenant Ron McDavid, a weapons officer, who indicated that appellant failed to follow instructions on the firing line, that she was having trouble qualifying with a 9 mm pistol and that, for safety she should not be allowed to carry a firearm. He denied badgering or belittling her for her inadequate performance or raising his voice. He did correct appellant for wearing inappropriate attire and stated that her inability to master the 9 mm pistol, even after four private coaching sessions, was "hard to believe."

On March 23, 1995 the employing establishment proposed that appellant be removed from her position for failure to qualify with the 9 mm weapon and for physical and mental inability to perform her duties. Appellant requested reassignment as a recreation aide, which was granted on May 26, 1995.¹

Appellant submitted medical evidence in support of her claim which included a February 7, 1995 fitness-for-duty report from Dr. A.A. Weber, a military physician. The report stated that for about 10 months appellant's supervisors and coworkers had documented major deficiencies in her job performance, which had recently deteriorated remarkably. Dr. Weber noted that appellant was unable to qualify with firearms in January 1995 and claimed that her problems were psychological and that her supervisors were determined to see her fail. On reassignment appellant became easily confused and flustered with multiple tasks and recognized a memory retention problem, but felt that this was due to her age or supervisory harassment. Dr. Weber noted that appellant felt depressed and had feelings of worthlessness and a lack of concentration; he diagnosed an occupational problem, ruled out cognitive, substance-related and personality disorders, and recommended a psychiatric evaluation.

In a February 17, 1995 report, Dr. John Stroudenmire, a clinical psychologist, noted that appellant's competency had been questioned and performed testing that revealed poor organizational skills, inattentiveness, lack of confidence and memory problems. Dr. Stroudenmire diagnosed attention deficit, hyperactivity disorder and adjustment disorder with anxiety.

In a June 15, 1995 report, Dr. George Tate, a clinical psychologist, related appellant's symptoms "to a high stress situation at work in which she was attempting to defend herself against being removed from her job [and] losing her means of making a livelihood and where she is proceeding with an EEO complaint." Dr. Tate noted as "work stress" that appellant "reports that she is being verbally demeaned and her performance is criticized in the presence of other employees, which makes her nervous and interferes with her concentration and good performance." He diagnosed adjustment disorder with mixed emotional features and recommended a neurological consultation. Dr. Tate opined: "The work stress is a cause of her

¹ Appellant provided multiple excuses for her performance failures including lack of strength and osteoarthritis as well as being groggy, working overtime, having a sinus infection and being embarrassed in front of the class.

presently diagnosed adjustment disorder. She believes that her work situation has changed and that she could now return to her former employment and perform satisfactorily.”

By decision dated April 30, 1996, the Office rejected appellant’s claim on the grounds that the evidence of record failed to demonstrate that the claimed condition occurred in the performance of duty. The Office found that appellant’s allegations of harassment and discrimination were not substantiated and were rebutted by the employing establishment, and that no EEO findings in appellant’s favor were presented.

Appellant requested an oral hearing, which was held on January 14, 1998. She testified that Sergeant McFarland humiliated her, embarrassed her, cut her down, singled her out, slandered and defamed her, and screamed at her in front of others and behind her back. Appellant alleged that Sergeant Carlson ran her down, that he ordered her to call in every time she went to the bathroom, that he made her pick up dead rabbits, that he would work her 12 nights in a row and then force her go to the firing range after she got off work in the morning. She alleged that she was exposed to illegal smoking, that the Chief cut her down, that Sergeant Manning wanted her to retire “on Alzheimer’s Disease,” that he would not let her use the dispatch telephone, that he would call her stupid and a bitch behind her back and write her up, that he performed surveillance on her house, and that he ordered her to take a fitness-for-duty examination.

At the hearing appellant submitted written statements, including one from Lieutenant Lisa Albuquerque dated November 8, 1993 which noted:

“As a result of my conversations with the personnel listed, I believe Sergeant McFarland systematically abused several of the personnel he has been assigned to supervise. His treatment particularly of [appellant] has been reprehensible. He has a continuing history of inappropriate sexual behavior in the workplace and has clearly created a hostile environment for those working for him.... He has been crude and inappropriate in his language and in his performance of body functions. Despite ongoing feedback ... that his behavior was objectionable, he continued to behave inappropriately and unprofessionally.”

Also submitted were various redacted memoranda of conversations between Lieutenant Albuquerque and various coworkers which indicated that Sergeant Manning would “behave harshly towards [appellant] as if he had something against her personally,” that Sergeant McFarland was heard to “speak badly about [appellant] both when she was present and when she was not,” that Sergeant McFarland did not treat appellant right; “he would cut her off and would n[o]t take time to explain things to her. If she would ask a question in front of people Sergeant McFarland would ask the other people what did I just say and ridicule her. He routinely blew her off and raised his voice to her.” Another officer was reported as stating that “[Sergeant] McFarland’s treatment of [appellant] was very bad.... [Officer (name redacted)] did not report the harsh treatment of [appellant] because [appellant] asked her not to.”

In a February 21, 1995 statement, James McBeth noted that he was appellant’s supervisor from November 1, 1994 through February 10, 1995, that he had no problems with her, but that “It is a known fact in the security department of the differential treatment given to [appellant] by [Sergeant] Manning on his shift when she worked with him. It is a known fact of [Sergeant] Manning’s attitude towards [appellant] and belittling her face-to-face and other

employees in the department. There were many remarks informing other employees how stupid she was.”

A March 6, 1995 sworn affidavit from Chief of Police Carver stated:

“I observed Manning throughout the period to have a harsh and unfair attitude towards [appellant]. On several occasions I heard Manning call [appellant] a crazy old bitch. It appeared to me that Manning was always trying to find something on her to write her up about rather than giving her the benefit of the doubt as he did with other officers. I verbally counseled Manning several times requesting that he not harass [appellant].”

* * *

“From the treatment [appellant] received from Albuquerque and Manning, I got the impression that they wanted to get rid of her.”

In a September 7, 1997 statement Jimmy G. Dawson noted that Sergeant Manning “appeared to stay on [appellant’s] case calling her stupid and generally degrading her in front of other officers.” He noted that Sergeant Manning and Sergeant Moore “also talked to the other officers about how stupid and incompetent she was and should not be working as a police officer.”

Mr. Spaustat wrote:

“[Lieutenant McDavid] [l]iked to yell, get people upset and expect them to qualify.... He was always hard on [appellant] and upset her a lot and made it hard for her to qualify. But for the 9 mm, she might have had some hand problems, because with him yelling at her she just couldn’t pull the slide back or function the weapon properly.”

By decision dated March 26, 1998, the hearing representative found that appellant had implicated compensable factors of employment, but that the medical evidence of record was insufficient to establish a causal relation with those compensable factors. The hearing representative found that appellant had established that she had been subjected to verbal abuse from Sergeant McFarland, as documented by Lieutenant Albuquerque, and that she had been subjected to verbal abuse from Sergeant Manning, as supported by statements from Mr. McBeth, Chief Carver, Mr. Girouard and J.G. Dawson. The hearing representative also found that appellant was subjected to profane language from Sergeant Davis, and was subjected to verbal abuse from Lieutenant McDavid, as corroborated by statements from Mr. Girouard and Mr. Spaustat. The hearing representative found, however, that none of the reports from Drs. Weber, Stroudenmire or Tate identified the multiple incidents of verbal abuse or implicated them as causative in the development of her diagnosed emotional conditions.

The Board finds that appellant has failed to establish that she developed an emotional condition causally related to her federal employment.

To establish that she has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting

employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized 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 Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.³

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 concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act.

Generally speaking, when an employee experiences an emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by his employment or has fear or anxiety regarding his or her ability to carry out assigned duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.⁴ Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment, and does not come within the coverage of the Act.⁵ Noncompensable factors of employment include administrative and personnel actions, which are not considered to be "in the performance of duty."⁶

When working conditions are alleged as factors in causing 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.⁷ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard.

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

³ *Id.*

⁴ *Donna Faye Cardwell*, *supra* note 2, see also *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Id.*

⁶ See *Joseph Dedonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

⁷ See *Barbara Bush*, 38 ECAB 710 (1987).

If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁸ When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.⁹

In this case, appellant's allegations of verbal abuse were substantiated and corroborated by multiple statements from coworkers and supervisors. Her other allegations of employment factors, however, were not found to be compensable as they were insufficiently detailed, were not corroborated by witnesses or were related to administrative or personnel functions which, absent evidence of error or abuse, are not compensable under the Act.

Dr. Weber merely reported appellant's presenting symptomatology and provided nonspecific diagnoses for her condition, but offered no opinion on causal relation with specific factors of appellant's employment. Similarly, Dr. Stroudenmire provided no opinion on causal relation with any specific factors of appellant's employment. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹⁰ Therefore, these reports are insufficient to establish appellant's claim.

Dr. Tate did provide an opinion on causal relationship stating that appellant's symptoms were all "closely related to a high stress situation at work" in which she was attempting to defend herself against removal and losing her livelihood and where she had filed an EEO complaint. However, neither of these implicated factors, fear of loss of job and pursuit of EEO complaint, are compensable factors of employment under the Act.

Dr. Tate also listed as "work stress" that appellant "reports that she is being verbally demeaned and her performance is criticized in the presence of other employees, which makes her nervous and interferes with her concentration and good performance," but he provided no specifics about the nature and extent of this verbal demeaning. Nor did he offer a rationalized analysis of the psychopathology involved in how this verbal demeaning caused or aggravated appellant's emotional conditions. Dr. Tate merely concluded that "the work stress is a cause of her presently diagnosed adjustment disorder."

The Board has frequently held that medical conclusions unsupported by rationale are of diminished probative value.¹¹ Appellant's burden of proof requires that she provide rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition. Because Dr. Tate's report contains only a

⁸ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁹ *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

¹⁰ *See Vicky L. Hannis*, 48 ECAB 538 (1997); *Linda I. Sprague*, 48 ECAB 386 (1997).

¹¹ *See Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

conclusory statement attributing appellant's diagnosed mental condition to work stress and provides no medical rationale whatsoever, appellant has failed to meet her burden of proof.

As no further probative and rationalized medical evidence causally relating appellant's emotional conditions to the verbal abuse to which she was subjected has been submitted, appellant has failed to establish her emotional condition claim.

The decision of the Office of Workers' Compensation Programs dated March 26, 1998 is hereby affirmed.

Dated, Washington, DC
December 5, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member