

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALCENE M. SINGLETON and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Laguna Niguel, CA

*Docket No. 99-1928; Submitted on the Record;
Issued December 1, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

On May 7, 1998 appellant, then a 45-year-old secretary, filed an occupational disease claim alleging that she sustained an emotional condition causally related to factors of her federal employment, which included an incident on December 19, 1997 when coworker Rochelle Toren shouted profanities at supervisor Mary Ann Smith;¹ feeling threatened by Ms. Toren, believing that Ms. Toren was upset with her concerning an incident in early December 1997 when Ms. Toren thought that appellant had made a mistake in her work; believing that Ms. Toren wrote a memorandum to Ms. Smith stating that she had been told by coworkers that appellant was acting as a "spy" for Ms. Smith; and being told by Ms. Smith that she was a burden.

In a report dated January 15, 1998, Dr. Paul Corona, appellant's attending physician, diagnosed anxiety and related that appellant complained of stress at work due to an incident involving a coworker who wrongly accused her of making an error and due to other unspecified actions of this coworker.

In a memorandum dated May 27, 1998, Ms. Smith related that appellant told her in December 1996 that she was taking medication for depression and mentioned some problems with her husband and daughter. She related that in November 1997 appellant stated that she was thinking of quitting her job to stay home or to concentrate on her work as a movie extra and also stated that her daughter had applied to a university and she would be able to qualify for financial aid for her daughter if she stopped working. Ms. Smith related that appellant was not present during the incident on December 19, 1997 between Ms. Smith and Ms. Toren. She stated that Ms. Toren had never threatened or harmed appellant and she denied that she ever told appellant

¹ Appellant indicated that she was not present during the incident but heard about it when she arrived at work that day.

that she was a burden. Regarding the incident when Ms. Toren thought that appellant had made an error, she related that the error had been Ms. Toren's, not appellant's and that Ms. Toren had apologized to appellant but appellant became obsessed about the incident.

In memoranda dated July 31 and October 22, 1998, Ms. Toren stated that she had never had a problem with appellant and had not thought that appellant ever had a problem with her and that she rarely saw appellant as she worked in the field most of the time.

By decision dated November 16, 1998, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she had failed to establish that her emotional condition was causally related to compensable factors of her employment.

By letter dated December 12, 1998, appellant requested a review of the written record and submitted additional evidence.

In a report dated March 4, 1998, Dr. Diane M. Zebari related that appellant wished to take a one-year leave of absence from work without pay due to work stress.

By decision dated April 21, 1999, the Office hearing representative affirmed the Office's November 16, 1998 decision.

The Board finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty causally related to factors of her employment.

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.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

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁵ *Effie O. Morris*, 44 ECAB 470 (1993).

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 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.

Appellant has alleged that harassment and discrimination on the part of her supervisor and a coworker contributed to her stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁸ 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.⁹ 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 or coworkers.¹⁰

Appellant alleged that she felt threatened by coworker, Ms. Toren, believed that Ms. Toren was upset with her concerning an incident in early December 1997 when Ms. Toren thought that appellant had made a mistake in her work and believed that Ms. Toren wrote a memorandum to supervisor Ms. Smith stating that she had been told by coworkers that appellant was acting as a "spy" for Ms. Smith. Appellant further alleged that Ms. Smith told her that she was a burden. However, in a memorandum dated May 27, 1998, Ms. Smith related that Ms. Toren had never threatened or harmed appellant and she denied that she ever told appellant that she was a burden. Regarding the incident when Ms. Toren thought that appellant had made an error, Ms. Smith related that an error had been made by Ms. Toren, not appellant and that Ms. Toren had apologized to appellant. In memoranda dated July 31 and October 22, 1998,

⁶ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁷ *Id.*

⁸ *David W. Shirey*, 42 ECAB 783 (1991); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁹ *Jack Hopkins, Jr.*, 42 ECAB 818 (1991).

¹⁰ 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).

Ms. Toren stated that she had never had a problem with appellant and had not thought that appellant ever had a problem with her and that she rarely saw appellant as she worked in the field most of the time. Regarding these allegations of harassment concerning Ms. Toren and Ms. Smith, appellant provided no corroborating evidence, such as witness statements, to establish her allegations as factual.¹¹ Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant also attributed her emotional condition to an incident on December 19, 1997 when coworker Ms. Toren shouted profanities at supervisor Ms. Smith. However, Ms. Smith related that appellant was not present during the incident on December 19, 1997 between Ms. Smith and Ms. Toren. As this incident did not concern appellant or her regular or specially assigned duties, it is not deemed a compensable factor of employment.

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.¹²

The decisions of the Office of Workers' Compensation Programs dated April 21, 1999 and November 16, 1998 are affirmed.

Dated, Washington, DC
December 1, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

¹¹ See *William P. George*, 43 ECAB 1159 (1992).

¹² 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.