

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MELONIE A. COLEY-BLYTHE and DEPARTMENT OF THE INTERIOR,
MINERALS MANAGEMENT SERVICE, Denver, CO

*Docket No. 98-1357; Submitted on the Record;
Issued February 2, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

The Board has duly reviewed the case record in the present appeal and finds that appellant has not met her burden.

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.¹

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.² On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.³ The disability is not covered when it results from such

¹ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² 5 U.S.C. § 8101 *et seq.*

³ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

factors as an employee's frustration from not being permitted to work in a particular environment or to hold a particular position or secure a promotion. Disabling conditions resulting from an employee's feelings of job insecurity, or the desire for a different job do not constitute personal injury sustained in the performance of duty within the meaning of the Act. In these cases, such feelings are considered to be self-generated by the employee as they arise in situations not related to assigned duties.⁴ While, as a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act,⁵ error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonable in the administration of a personnel matter, may afford coverage.⁶ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁷

On August 25, 1997 appellant, then a 37-year-old compliance analyst, filed an occupational disease claim, alleging that stress at work caused stomachaches, headaches, vomiting and lack of sleep. She specifically stated that she was harassed at work because she had filed an Equal Employment Opportunity (EEO) complaint⁸ and had been reassigned in retaliation. She did not stop work but had taken intermittent annual and sick leave. In an attached statement, she indicated that the illness began on July 14, 1997 when she became sick at work and that she also went home sick on August 14, 1997. By decision dated March 4, 1998, the Office of Workers' Compensation Programs denied the claim, finding that the evidence of record failed to establish that the claimed injury occurred in the performance of duty. The instant appeal follows.

The employing establishment provided a letter of counseling dated August 14, 1997 in which, Terri Morzos, supervisory auditor, counseled appellant for not following appropriate leave procedures. Ms. Morzos cited specific agency policy and indicated that appellant had improperly requested leave for July 17, 18 and 21, 1997. She stated that, while the leave had initially been disapproved, this was later changed to annual leave. Appellant was counseled on the proper leave procedures.

The record also contains an official reprimand dated August 21, 1997 in which, Kenneth M. Moyers, supervisory auditor, stated that on July 14, 1997 he had informed appellant that a detail she had been working on had been suspended and that she was to return to her position of record. He cited agency policy and advised that she deliberately failed to timely carry out his direct instructions and did not return to her position of record until July 23, 1997.

⁴ See *Donald E. Ewals*, 45 ECAB 111 (1993).

⁵ See *Norman A. Harris*, 42 ECAB 923 (1991).

⁶ *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁷ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁸ A copy of an August 8, 1997 letter from appellant's attorney to EEO is contained in the record and describes events that preceded the present claim.

She, therefore, failed to carry out direct instructions in a timely fashion. He also listed several other incidents in which appellant had not followed agency policy.

Appellant submitted a statement in which she stated that on July 14, 1997 she was removed from working in a specific area by Mr. Moyers “because I had requested a position description, which described the GS-13 duties I was performing.”⁹ She stated that this was the third time she had been reassigned since May 29, 1997 and stated that Ms. Morzos had not approved a leave request in reprisal. Appellant then described her activities for the week of July 14, 1997, which indicated that she had not followed Mr. Moyers’ instructions.¹⁰

Regarding appellant’s allegations, as a general rule, a claimant’s reaction to administrative or personnel matters fall outside the scope of coverage of the Act.¹¹ The fact that she had filed an EEO complaint, by itself, would not establish that workplace harassment or unfair treatment occurred.¹² Furthermore, allegations of harassment based on the denial of leave are not compensable under the Act absent evidence of error or abuse in the administration of the personnel matter.¹³ Likewise, while the assessment of conduct is generally related to the employment, it is an administrative function of the employer, not a duty of the employee and will not be a compensable employment factor absent error or abuse by the employing establishment. In this case, appellant did not submit any evidence showing that the letter of counsel regarding her leave request and official reprimand regarding failure to follow instructions regarding a reassignment were unwarranted or constituted error or abuse by the employing establishment.¹⁴ In fact, in a statement provided by appellant, she essentially concurred with Mr. Moyers statement that she had not returned to her position of record when informed to do so. Appellant, therefore, has not established a compensable employment factor and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty as alleged.¹⁵

⁹ The record indicates that appellant was a GS-12.

¹⁰ She stated that she continued to attend meetings regarding her previous detail assignment and met with her attorney regarding her EEO complaint.

¹¹ 5 U.S.C. §§ 8101-8193; *see Janet I. Jones*, 47 ECAB 345 (1996).

¹² *See generally Alice M. Washington*, 46 ECAB 382 (1994).

¹³ *Martha L. Watson*, 46 ECAB 407 (1995).

¹⁴ *Elizabeth W. Esnil*, 46 ECAB 606 (1995).

¹⁵ As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).

The decision of the Office of Workers' Compensation Programs dated March 4, 1998 is hereby affirmed.

Dated, Washington, D.C.
February 2, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member