

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RITA L. SEARS-VELARDE and DEPARTMENT OF THE ARMY,
Fort Wainwright, AK

*Docket No. 98-268; Submitted on the Record;
Issued January 28, 2000*

DECISION and ORDER

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

The issue is whether appellant has met her burden of proof to establish that she sustained an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

On March 19, 1993 appellant, then a 42-year-old computer specialist, filed a claim for occupational disease alleging that she developed an emotional condition in the course of her federal employment duties, specifically, as a result of working with her supervisor, Mr. Robert D. Lake. In a decision dated March 17, 1994, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record did not establish that she sustained an injury in the performance of duty. The Office did not review the medical evidence. By letter dated March 29, 1994, appellant requested an oral hearing before an Office hearing representative. In a decision dated October 28, 1994, the Office hearing representative affirmed the Office's March 17, 1994 decision. On June 26, 1995 appellant requested reconsideration of the Office's decision. In support of her request, appellant submitted additional factual and medical evidence, including a May 24, 1995 decision of the U.S. Office of Special Counsel finding that an investigation established facts that supported appellant's assertion that she had been the victim of prohibited personnel practices, specifically, that personnel actions were taken against her because of her disclosure of wrongdoing by her supervisor. Appellant also asserted that she had developed a heart condition, which had been associated with her employment-related stress. In a decision dated August 3, 1995, the Office modified its prior decision to accept as factual appellant's allegations that her supervisor, Mr. Lake, retaliated against her in reprisal for her January 1992 reporting of his prohibited activities and that Mr. Lake's actions from January 9, 1992 to March 29, 1993 constituted harassment. The Office further found that appellant's relationship with Mr. Lake, during the period September 1991 to March 19, 1993, was difficult and marked by conflict. The Office determined, however, that appellant had not established that she has a psychiatric condition causally related to these employment factors, or that she developed a heart condition as a result of these factors. On October 27, 1995 appellant, requested reconsideration of the Office's

decision and submitted additional medical evidence in support of her request. In a merit decision dated June 6, 1996, the Office found that the medical evidence was insufficient to establish a causal relationship between either appellant's diagnosed psychiatric disorder or heart condition and the accepted factors of employment.

By letter dated April 14, 1997, appellant again requested reconsideration. In support of her request, appellant submitted an October 23, 1996 report from Dr. Robert Schults, an April 4, 1997 report from Dr. Ronald B. Wurtsbaugh and a November 26, 1996 report from Dr. Sam H. Traughber.

In a decision dated September 8, 1997 and finalized on September 9, 1997, the Office denied appellant's request for reconsideration on the grounds that the newly submitted evidence was insufficient to warrant review of the Office's prior decision. The Office specifically determined that Dr. Schults' report was repetitious and reiterated opinions rendered in his earlier reports, and that he provided no rationale on the issue of the causal relationship between appellant's diagnosed conditions and the accepted employment factors. The Office further found the opinion of Dr. Wurtsbaugh similarly lacking in rationale on the issue of causal relationship. Finally, the Office found Dr. Traughber's opinion repetitious and not rationalized.

The Board notes that in the September 8, 1997 decision the Office conducted a merit review of appellant's claim.

In the September 8, 1997 decision, the Office stated that the newly submitted reports from Drs. Schults, Traughber and Wurtsbaugh were insufficient to warrant further merit review of the prior decision. The Board finds, however, that the accompanying memorandum indicates that the Office, in fact, considered the merits of appellant's claim in the decision. In the memorandum, the Office specifically weighed the probative value of Dr. Wurtsbaugh's opinion, finding it diminished as it was not supported by medical rationale explaining the nature of the relationship between the diagnosed post-traumatic stress disorder and the accepted factors of employment. The Office further noted that it is not known whether Dr. Wurtsbaugh, who did not treat appellant until several years after the onset of her illness, was aware of the complete factual and medical background of appellant's case. This is not a proper standard for determining whether a case should be reopened for merit review¹ but instead is the standard to be used when conducting a merit review where the issue involves causal relationship between the diagnosed condition and the employment injury. Therefore, the Board finds that, in its September 8, 1997 decision, the Office conducted a merit review of appellant's claim. For this reason, the Board has jurisdiction to consider the merits of appellant's claim.

The Board finds that the case is not in posture for decision on the issue of whether appellant has established that she sustained an emotional condition in the performance of duty.

¹ The Board has held that the requirement for reopening a claim for merit review does not include the requirement that a claimant must submit all evidence which may be necessary to discharge his or her burden of proof. *Kenneth R. Mroczkowski*, 40 ECAB 855, 858-59.

To establish that an emotional condition was sustained in the performance of duty, there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.² There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.³

The first issue to be addressed is whether appellant has cited factors of employment that contributed to her alleged emotional condition or disability. 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 Federal Employees' Compensation Act.⁴ On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.⁵

It is well established that mere perceptions of harassment or discrimination do not constitute a compensable factor of employment. A claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.⁶ The Board has held that, 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 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 The Office has the obligation to make specific findings with regard to the allegations raised by a claimant. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a compensable factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings, alone, are not compensable. Only when the matter asserted is a compensable factor of employment and the evidence establishes the truth of the matter asserted may the Office then base its decision to accept or reject the claim on an analysis of the medical evidence.⁸

² See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

³ See *Ruth C. Borden*, 43 ECAB 146 (1991).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Id.*

⁶ *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁷ *Norma L. Blank*, 43 ECAB 384 (1992).

⁸ *Id.*

In the instant case, appellant explained that in the first week of January 1992, while performing her job duties, she uncovered evidence which she believed established that her supervisor, Mr. Lake, had used government supplies, equipment and time for his personal use. Appellant informed the agency Internal Auditor of her findings, who reported the information to another agency official, who in turn informed Mr. Lake of appellant's complaint against him. Appellant asserted that on January 9, 1992 Mr. Lake called her into his office to discuss the fact that she had reported his activities and in the same discussion, he referenced the fact that her appraisal was due. Appellant stated that she perceived this statement, taken in the context of the discussion regarding her allegations against Mr. Lake, to be a threat of reprisal against her. Appellant alleged that beginning on January 9, 1992, Mr. Lake engaged in a pattern of harassment against her, including frequently threatening to move her office or to downgrade her position, closely scrutinizing her work, giving her conflicting instructions and then chastising her for failure to complete her tasks, telling her and others that she did not know her job, disapproving her request for training and assigning unreasonable deadlines to her tasks. Appellant stopped work on March 19, 1993 and resigned her position on May 24, 1993. In support of her claim for compensation benefits, appellant submitted a letter from the U.S. Office of Special Counsel for Prosecution, which stated:

“The Office of Special Counsel has completed its investigation of your request for assistance regarding the circumstances of your May 1993 resignation from your position at Bassett Army Medical Center, Fort Wainwright, Alaska. Our investigation established facts that supported your assertion that you had been the victim of prohibited personnel practices. Personnel actions were taken against you because of your disclosure of wrongdoing by your supervisor.”

The letter went on to state that as a result of this decision, all adverse information regarding appellant had been purged from any official system of records, favorable job recommendations had been guaranteed for any future employment appellant might seek and appellant had been awarded a lump sum of \$86,612.00 under the Back Pay Act. In light of the factual evidence submitted by appellant, the Office properly found that appellant's supervisor, Mr. Lake, retaliated against her in reprisal for her January 1992 reporting of his prohibited activities and that Mr. Lake's actions from January 9, 1992 to March 29, 1993 constituted harassment.

In the present case, appellant has established a compensable factor of employment: that she was subjected to harassment by her supervisor from January 9, 1992 until March 29, 1993. However, appellant's burden of proof is not discharged by the fact that she has established employment factors, which may give rise to a compensable disability under the Federal Employees' Compensation Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the established compensable factors.⁹ Rationalized medical opinion evidence is medical evidence, which 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. The

⁹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

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 the claimant.¹⁰

In support of her claim for compensation benefits, appellant has submitted numerous reports from her treating physicians. Most recently, in support of her April 14, 1997 request for reconsideration, appellant submitted reports from Drs. Schults, Traugher and Wurtsbaugh. Dr. Traugher's November 26, 1996 opinion that "periods of stress have been known to precipitate premature ventricular contractions and increase their frequency" is simply a general statement, not specific to appellant and, therefore, is of little probative value.¹¹ The October 23, 1996 opinion of Dr. Schults that appellant "sought treatment due to ongoing symptoms of post-traumatic stress disorder, major depression, and anxiety subsequent to harassment and the hostile work environment she had experienced at work under the supervision of a Mr. Lake" and that her "symptoms of PTSD were a direct result of working under hostile employment conditions for a prolonged period" is also of diminished probative value as Dr. Schults does not provide the necessary rationale explaining the causal relationship between appellant's diagnosed conditions and her accepted employment factors.¹²

In a report dated April 4, 1997, Dr. Wurtsbaugh, a psychiatrist, stated that he had been treating appellant since December 1996 for post-traumatic stress disorder, generalized anxiety disorder and major depression, which are all related to events that occurred while she was employed by the U.S. Army in 1992 to 1993. Dr. Wurtsbaugh further stated that the well-documented harassment which occurred at appellant's workplace "produced a post[-]traumatic stress disorder, with recurrent and intrusive recollections of numerous events experienced in 1993, with almost nightly dreams, significant anxieties and at times, overt panic. When the anxiety and feelings of panic related to thoughts of these events occur, appellant frequently experiences racing heart with cardiac palpitations and by report from her internist premature ventricular contractions occur. Although she has responded somewhat to treatment, she is still significantly impaired with continuing symptoms as described."

The Board finds that, although Dr. Wurtsbaugh's report is insufficient to meet appellant's burden of proof, the physician does supply supporting rationale and explains how, in his opinion, the accepted factors of employment caused appellant's diagnosed emotional condition. Dr. Wurtsbaugh's medical report is sufficient to require further development of the case record

¹⁰ *Id.*

¹¹ To be of probative value, medical evidence must be provided by a physician which is specific to appellant rather than general in nature; see *Durwood H. Nolin*, 46 ECAB 818 (1995).

¹² Rationalized medical evidence is medical evidence which 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. The 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 the claimant. *Joe L. Wilkerson*, 47 ECAB 604 (1996).

by the Office.¹³ On remand, the Office should further develop the medical evidence by preparing a statement of accepted facts, including the accepted employment factors, and obtaining further medical opinion as to whether those factors caused or aggravated appellant's emotional condition. After this and such other further development as the Office deems necessary, the Office should issue an appropriate decision.

Therefore, the decision of the Office of Workers' Compensation Programs dated September 8, 1997, finalized September 9, 1997, is set aside and the case is remanded for further action in accordance with this decision and order of the Board.

Dated, Washington, D.C.
January 28, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

¹³ *John J. Carlone*, 41 ECAB 354, 358 (1989).