

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA A. KINDT and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Fort Worth, TX

*Docket No. 98-1294; Submitted on the Record;
Issued January 31, 2000*

DECISION and ORDER

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

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

On July 10, 1995 appellant, then a 31-year-old air traffic control specialist, filed a notice of traumatic injury and claim, alleging that on July 8, 1995 she sustained trauma after an altercation with a coworker. Appellant reported that about three weeks prior to the July 8, 1995 incident, Dorothy Stooksberry relayed feelings of guilt and anger over a sexual harassment suit filed by appellant. She indicated that, on July 8, 1995, Ms. Stooksberry shoved a chair at her and used profanity after appellant had said "excuse me." Appellant stopped work on July 9, 1995. In a supplemental statement, appellant reiterated her recollection of events and reported that after a meeting following the altercation with Ms. Stooksberry and her supervisor, she was in tears all night. Appellant submitted medical reports for post-traumatic stress disorder. The employing establishment controverted the claim on the grounds that the claimed condition arose out of a personal conflict rather than within the performance of duty.

In a decision dated September 19, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish that the injury occurred within the performance of duty. By decision dated and finalized on October 18, 1996, an Office hearing representative affirmed the September 19, 1995 decision of the Office. In a merit decision dated December 19, 1997, the Office denied appellant's request for modification.

The Board has duly reviewed the case record on appeal and finds that appellant has not established that she sustained an emotional condition while in the performance of duty.

The initial question presented in an emotional condition claim is whether appellant has alleged and substantiated compensable factors of employment contributing to her condition. 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 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 factors such 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. Disabling conditions resulting from an employee's feeling of job insecurity or desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.¹ 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.² 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.³

In the present case, in her request for modification, appellant through counsel, alleged that witness statements supported her contention that an assault had occurred, that appellant was in fear of her safety and that, since the dispute leading to the incident, appellant's sexual harassment claim, was work related, the claimed assault by Ms. Stooksberry was compensable. A review of the record reveals that appellant believed the claimed assault with a chair was due to Ms. Stooksberry's guilt and concerns over not supporting a sexual harassment claim filed by appellant. Contrary to appellant's recitation of events on July 8, 1995, the witness statements provided by Tracey Collins, appellant's immediate supervisor, Don Schneider, the controller in charge, Ms. Stooksberry, Mark Gradney, Darryl Ransom, Colin Asekum and Ron Lozano, coworkers, indicate that the events did not occur as alleged by appellant. Several witnesses recalled Ms. Stooksberry advising appellant that she did not have to be so rude and indicated that appellant had bumped Ms. Stooksberry's chair in passing by it. Their statements corroborated that Ms. Stooksberry was louder than usual; however, none of the witnesses recalled any use of profanity. In addition, the statement from Mr. Lozano, which contained the clearest recollection of the dialogue between the two women, also indicated that Ms. Stooksberry moved the chair into an ELA position while talking to appellant and not at her. Thus appellant's allegations are supported by corroborating evidence, only to the extent that a loud discussion took place between her and Ms. Stooksberry. The witness statements do not support that Ms. Stooksberry attempted to assault appellant with a chair or used profanity and the evidence does not establish that Ms. Stooksberry initiated the altercation, as alleged.

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985).

³ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

The Board also finds that appellant's argument that the alleged assault occurred within the performance of duty because it arose out of a work-related matter is without a factual basis. Initially, it is noted that appellant's filing of a sexual harassment claim was not within her regularly assigned or any specially assigned duties and thus this incident is not compensable under the Act. In addition, appellant's altercation with Ms. Stooksberry stemmed from a personal discussion that occurred at a private party some three weeks prior to the July 8, 1995 incident. Thus, the subject of the argument or resulting animosity, if it had resulted in an assault, was imported into the workplace from appellant's private or domestic life. Thus, it cannot be deemed to arise out of appellant's employment and is not compensable.⁴ Appellant has not established any compensable factors of her employment and has not established that she sustained an emotional condition within the performance of duty.

The decision of the Office of Workers' Compensation Programs dated December 19, 1997 is hereby affirmed.

Dated, Washington, D.C.
January 31, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁴ A. Larson, *The Law of Workers' Compensation* § 11.00 (1990); see *Agnes Blackwell*, 44 ECAB 200 (1992).