

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE J. PETROFF and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION HOSPITAL, Iron Mountain, MI

*Docket No. 99-1287; Submitted on the Record;
Issued July 17, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

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 finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

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.¹ 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.²

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.³ This burden includes the submission of a detailed

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

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 of Workers' Compensation Programs, 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.⁵ 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.⁶

On March 31, 1998 appellant, then a 50-year-old boiler plant operator, filed a traumatic injury claim alleging that she sustained emotional and stress-related conditions due to a confrontation at work on March 25, 1998 with a supervisor, Gerald Hicks.⁷ By decision dated May 22, 1998, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. On May 6, 1998 appellant filed an occupational disease claim alleging that she sustained emotional and stress-related conditions due to various incidents and conditions at work.⁸ By decision dated September 8, 1998, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether the alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that the employing establishment wrongfully denied her use of sick leave and mishandled the handling of her leave requests. She claimed that the employing establishment unfairly issued her a suspension notice on December 12, 1997 in connection with her leave use. Appellant alleged that she unfairly received a disciplinary notice in connection with her failure on December 24, 1997 to properly notify the proper personnel for snow removal. Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions and wrongfully denied leave, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.⁹ Although the handling of

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

⁷ The case number of the claim is A9-439632.

⁸ The case number of the claim is A9-442673. The Office has combined the files of appellant's two claims.

⁹ *See Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

disciplinary actions and leave requests and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹⁰ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹¹ Appellant has not shown that the employing establishment committed error or abuse in connection with the above-noted administrative actions. Appellant filed a grievance in connection with the December 12, 1997 disciplinary action but the basis of the employing establishment's action was upheld.¹² Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant alleged that on March 25, 1998 Mr. Hicks harassed her by using abusive language, denying her permission from leaving work and attempting to block her path when she left work.¹³ She also alleged that supervisors and coworkers spoke to her in a different tone of voice and disciplined her differently because she was a woman. 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.¹⁴ 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.¹⁵ 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.¹⁶

With respect to the March 25, 1998 incident, Mr. Hicks admitted that he raised his voice but noted that he did so after appellant yelled at him when he pointed out her failure to properly perform a painting job.¹⁷ Moreover, the record reveals that appellant was in fact allowed to leave the employing establishment on sick leave. Although, the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement

¹⁰ *Id.*

¹¹ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹² The length of appellant's suspension was reduced, but the mere fact that personnel actions were later modified, does not in and of itself, establish error or abuse. *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

¹³ Appellant also inadvertently reported the incident as occurring on April 3, 1998.

¹⁴ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁵ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁶ 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).

¹⁷ A coworker indicated that Mr. Hicks "glared" at appellant but he did not provide any indication that Mr. Hicks made abusive comments or otherwise harassed appellant.

uttered in the workplace will give rise to coverage under the Act.¹⁸ Appellant has not shown how Mr. Hicks' actions would rise to the level of verbal abuse or otherwise fall within the coverage of the Act.¹⁹ Appellant alleged that supervisors and coworkers made statements and engaged in actions, which she believed constituted harassment and discrimination, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.²⁰ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

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.²¹

The decisions of the Office of Workers' Compensation Programs dated September 8 and May 22, 1998 are affirmed.

Dated, Washington, D.C.
July 17, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁸ *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

¹⁹ *See, e.g., Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). *Compare Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

²⁰ *See William P. George*, 43 ECAB 1159, 1167 (1992).

²¹ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).