

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SYLVIA B. TAYLOR and DEPARTMENT OF DEFENSE,  
DEFENSE LOGISTICS AGENCY, New Orleans, LA

*Docket No. 98-2426; Submitted on the Record;  
Issued June 12, 2000*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

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

On October 20, 1997 appellant, then a 46-year-old secretary, filed a notice of occupational disease, alleging that she suffered stress and severe anxiety because her commander treated her harshly and unfairly. In this regard, appellant stated that she was singled out and subject to pressure on a daily basis. Appellant indicated that she became aware of her condition on February 1, 1997 and that it was caused or aggravated by her employment on July 1, 1997. Appellant stopped working on September 18, 1997.

On December 3, 1997 the Office of Workers' Compensation Programs advised appellant of the evidence needed to establish her claim, including the need for her to submit specific descriptions of the incidents, which she believed caused her condition.

On December 5, 1997 appellant's supervisor, Commander J.W. Mullally, stated that appellant's position within the Management Support Office (MSO) was disestablished as part of a general reorganization plan. He noted that all MSO personnel were assigned to work directly under him and that no one lost their job. Commander Mullally stated that he received complaints concerning appellant's typing in May 1997.

A December 8, 1997 notice of proposed suspension from Commander Mullally indicated that he proposed to suspend appellant for absences without leave and failure to request leave in accordance with procedures. He noted that a Judge Advocate General Corps investigator found that appellant was absent without leave on July 17 and 18, 1997 and found that she failed to request leave for her absences from October 20 through October 24, 1997.

In an undated statement received December 10, 1997, appellant alleged that she offended Commander Mullally, when she honestly answered questions on an independent development

plan (IDP). She indicated that the supervisor then began a campaign to destroy her career through character assassination and poor evaluations. Appellant further stated that the supervisor tried to eliminate her job upon hearing rumors about her. She stated that the supervisor pressured her and criticized her work. Appellant also indicated that she was instructed by the supervisor to perform illegal acts and violate government regulations in an attempt to get her fired.

On December 19, 1997 appellant's supervisor denied that he engaged in any campaign to destroy appellant's career through character assassination and poor evaluations. He denied hearing any comments about appellant, which affected his opinion about her. Commander Mullally also restated that appellant's position within MSO was disestablished as part of a general reorganization plan, that all MSO personnel were assigned to work directly under him and that no one lost their job. Appellant's supervisor also denied instructing appellant to perform illegal acts or violate government regulations. He stated that he did provide appellant with a letter of instruction, dated May 21, 1997, which instructed her to improve her typing. Commander Mullally noted that appellant never received an evaluation from him because she had not worked for him long enough. He indicated that, pursuant to a Judge Advocate General Corps investigation, appellant was found absent without leave on July 17 and 18, 1997, but not on June 12 and 13 or July 11, 1997. Commander Mullally further indicated that a letter of counseling was sent to appellant for failing to comply with leave requirements on July 25, 1995 for the leave taken on July 21, 1997.

In a letter received December 22, 1997, appellant alleged that her supervisor abolished her position in retaliation for her answers on the IDP plan and for speaking out concerning rumors spoken by a lead person about her. She also contended that she was forced to report directly to the supervisor as retaliation. Appellant indicated that the supervisor reprimanded her in April 1997 for missing a meeting. She also stated that her supervisor reprimanded her for her typing and gave her a poor evaluation. Appellant stated that in June and July 1997 the supervisor falsely accused her of being absent without leave. She indicated that Commander Mullally removed her computer to harass her. Appellant stated that he told security that she was under criminal investigation and should be kept from the premises. Finally, she indicated that the supervisor suspended her for leave violations in December 1997.

On April 3, 1998 Commander Mullally again denied that he engaged in any campaign to destroy appellant's career through character assassination and poor evaluations. He again stated that appellant's MSO position was disestablished as part of a reorganization plan, that all MSO personnel were assigned to work directly under him. Commander Mullally also denied reprimanding appellant for missing a meeting in April 1997 and submitted a "Letter of Instruction" dated April 21, 1997, indicating that appellant was only instructed to attend scheduled meetings. He also stated that appellant's typing was deficient in May 1997 and that she received a letter of instruction directing her to improve her typing. Commander Mullally again indicated that, pursuant to a Judge Advocate General Corps investigation, appellant was found absent without leave on July 17 and 18, 1997, but not on June 12 and 13, 1997 or July 11, 1997. He further stated that appellant's computer was only removed after she stopped working at the employing establishment.

By decision dated April 23, 1998, the Office denied appellant's claim because she failed to establish an injury in the performance of duty.

The Board finds that appellant has not met 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 his or 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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

In the present case, appellant alleged that, in response to her answers on an IDP questionnaire and to her subsequent questioning of rumors told about her, her supervisor,

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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

<sup>3</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

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

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

<sup>6</sup> *Id.*

Commander Mullally, singled her out for a campaign of character assassination and job pressure. In this regard, appellant provided a long list of mostly administrative actions taken by this supervisor as part of this campaign. The alleged harassing actions included:

“The abolishing of her position with the MSO, the subsequent reassigning of appellant to report directly to the supervisor, reprimanding her for poor work and missed meetings, giving her poor performance evaluations, falsely accusing and suspending her for being absent without leave, removing her computer, informing security that appellant was under criminal investigation as a means of keeping her from the work site and instructing her to a commit illegal acts or acts contrary to government regulations.”

The Board has 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.<sup>7</sup> Appellant, however, submitted insufficient evidence to support her allegations that the employing establishment acted in error or abusively in the administrative matters she listed.

Moreover, the employing establishment provided reasonable explanations for its actions in these administrative matters. In this regard, Commander Mullally explained that appellant’s loss of her position with the MSO and her subsequent reassignment directly to him was merely a part of the employing establishment’s reorganization plan effecting the entire organization. He also stated that appellant was never reprimanded for poor performance or missed meetings, but that she did receive letters of instruction in response to complaints of poor work and a missed meeting. Commander Mullally submitted the letters of instruction dated May 21 and April 21, 1997, which merely directed appellant to correct the deficiencies and contained no adverse action. This evidence refutes appellant’s assertion that Commander Mullally acted abusively in these matters. Moreover, he denied ever providing a performance appraisal on the basis that appellant had not worked long enough under him to receive one. In this regard, appellant did not submit a performance appraisal supporting her contention. In addition, there is no evidence that Commander Mullally erred or acted abusively in investigating and, in some cases, charging appellant with being absent without leave. Commander Mullally denied the allegation and the record indicates that the charges were factually supported by an investigation conducted by a Judge Advocate General Corps lawyer. There is also nothing to suggest that Commander Mullally acted in error or abusively in proposing a suspension of appellant in December 1997 for the leave violations based on the properly conducted investigation. Commander Mullally also explained that appellant’s computer was removed only after she stopped working in September 1997. Consequently, this reallocation of equipment fails to constitute error or abuse.

In addition to the administrative matters cited above, Commander Mullally denied that he told security that appellant was under criminal investigation to keep her off the premises, or that he instructed her to violate the law or government regulations. Because appellant failed to submit any corroborating evidence that these events occurred as alleged, they are not established as factual.

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<sup>7</sup> *Martin Standel*, 47 ECAB 306 (1996).

Accordingly, appellant failed to establish a compensable factor of employment and did not meet her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

The decision of the Office of Workers' Compensation Programs dated April 23, 1998 is affirmed.

Dated, Washington, D.C.  
June 12, 2000

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member