

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA S. LILES and DEFENSE LOGISTICS AGENCY, DEFENSE
DISTRIBUTION DEPOT OKLAHOMA, TINKER AIR FORCE BASE, OK

*Docket No. 98-2591; Submitted on the Record;
Issued June 14, 2000*

DECISION and ORDER

Before DAVID S. GERSON, 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 has duly reviewed the case record in the present appeal and finds that the case is not in posture for decision.

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 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 his 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 he 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

In the present case, appellant, then a 41-year-old packaging specialist, alleged that she developed an emotional condition due to gender based disparate treatment from her first line supervisor and that her condition was compounded when, after her supervisor was found guilty of inappropriate practices, she was again placed under his supervision. By decision dated April 23, 1997, the Office denied appellant's claim on the grounds that she did not establish any compensable employment factors. She requested an oral hearing, and in a decision dated May 22, 1998, an Office hearing representative affirmed the Office's prior decision. The Board must, thus, initially review whether the alleged conditions of employment are covered employment factors under the terms of the Act.

In narrative statements submitted in support of her claim, appellant specifically asserted that her first line supervisor, Dale Gill, subjected her to disparate treatment when, in August 1994 he advised appellant to personally inform his secretary when she arrived at work, while a male employee was allowed to call in his arrival; on January 27, 1995 he asked her to turn in her pager while a male employee was allowed to keep his pager; on January 16, 1996, following the institution of a policy that all employees obtain safety shoes, he asked to see appellant's safety shoes before he would process her reimbursement request but did not ask to see a male coworkers' shoes; and on February 26, 1996, when appellant requested 35.5 hours of sick leave for some upcoming surgery, he asked her to produce a statement from her physician, prior to the surgery, substantiating her claim that she was going to undergo medical treatment on those days for which leave was requested. Appellant further stated that on February 29, 1996 she and four female coworkers filed an informal complaint with their Equal Employment Opportunity EEO counselor, alleging sexual harassment, disparate treatment and sexual innuendoes on the part of Mr. Gill.⁷ An interoffice investigation into the complaint was conducted by Bill A. Watkins, Chief, Support Office, who concluded in his April 4, 1996 report:

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

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

⁶ *Id.*

⁷ Appellant clarified that her complaints did not involve sexual harassment or sexual innuendoes, but involved

“In summary, the evidence gathered by my investigation reveals that Mr. Gill has committed acts of disparate treatment of females in the areas of leave procedures, sexual innuendoes, denying women the opportunity to participate in the selection of office seating arrangements and harassment (nonsexual). He has created a hostile work environment by applying the rules of work more stringently for female employees. [Mr. Gill] has committed sexual harassment by making physical contact (pats on back) with only the female employees and requiring a female employee to submit presurgery medical reports prior to receiving leave approval.”

Appellant explained that while her request to be removed from Mr. Gill’s supervision was granted in April 1996, several months later, on September 16, 1996, she was placed back under his supervision. Appellant’s September 17, 1996 request for reassignment to a Safety and Occupational Health Specialist position, away from Mr. Gill, was denied and on October 18, 1996 she filed another EEO complaint, which was resolved in her favor, with an offer of reassignment, on December 31, 1996.

Regarding appellant’s allegation that the employing establishment erred in placing her back under Mr. Gill’s supervision after he had been found guilty of conduct unbecoming a supervisor, the Board finds that this allegation relates to an administrative or personnel matter, unrelated to the employee’s regular or specially assigned work duties and does not fall within the coverage of the Act.⁸ Although the handling of such a personnel matter is generally related to the employment, it is an administrative function of the employer and not a duty of the employee.⁹ However, the Board has also found that an administrative 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.¹⁰ The record contains statements from Bill Watkins in which he stated that immediately upon receiving appellant’s initial complaint regarding Mr. Gill, he removed appellant to a temporary assignment away from him, pending resolution of the matter. Mr. Watkins added that he supported appellant’s request for permanent reassignment to a position not under Mr. Gill’s supervision, but that he felt that appellant was not qualified for the Safety and Occupational Health Specialist position to which she had requested reassignment and that appellant’s lack of adequate qualifications had been confirmed by the Civilian Personnel Office. He further stated that he had continued to monitor vacant positions for both commensurate with appellant’s qualifications and not under Mr. Gill’s supervision. Mr. Watkins further explained that he had formally ordered policy changes in the way seating arrangements and leave requests were approved and had taken disciplinary action against Mr. Gill. The Board finds that the statements

only gender based disparate treatment.

⁸ See *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

⁹ *Id.*

¹⁰ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

from Mr. Watkins establish that the employing establishment acted reasonably in returning appellant to work under the supervision of Mr. Gill until more permanent arrangements could be made and that, therefore, there was no error or abuse with respect to this specific allegation.

The Board further finds, however, that the statements from Mr. Watkins, including the results of his investigation, constitute an acknowledgment that appellant was subjected to disparate treatment while under the supervision of Mr. Gill. Mr. Watkins specifically found that the evidence established that Mr. Gill's conduct was unbecoming a supervisor and that he had committed acts of disparate treatment and created a hostile work environment by applying the work rules more stringently to the female employees. In addition to his findings regarding the general work atmosphere, Mr. Watkins specifically acknowledged that Mr. Gill's requests that appellant personally report her arrival at work to his secretary and that she provide a medical statement prior to undergoing surgery, constituted disparate treatment.¹¹ As appellant has shown that Mr. Gill was abusive with regard to these administrative matters, she has established compensable employment factors under the Act in this respect.

As appellant has implicated compensable employment factors with respect to her treatment by her supervisor, Mr. Gill, the Office must base its decision on an analysis of the medical evidence. As the Office found there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded to the Office for the purpose of evaluating the medical aspect of appellant's claim.¹² After such further development as deemed necessary, the Office should issue an appropriate decision on this matter.

¹¹ Mr. Watkins found that the evidence did not establish any wrongdoing on the part of Mr. Gill regarding the pager or safety shoe incidents. After reviewing the evidence, the Board concurs in these findings.

¹² See *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

The decision of the Office of Workers' Compensation Programs dated May 22, 1998 is set aside and the case remanded to the Office for proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
June 14, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member