

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELAINE BURNS and DEPARTMENT OF THE ARMY,
CIVILIAN PERSONNEL ADVISORY CENTER, Fort Bragg, NC

*Docket No. 99-789; Submitted on the Record;
Issued June 15, 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 occupational disease in the performance of duty.

On September 23, 1997 appellant, then a 33-year-old military personnel clerk, timely filed a notice of occupational disease and claim for compensation alleging that she sustained mouth ulcers caused by emotional stress at work.¹

In support of her claim, appellant filed an attending physician's report (Form CA-16), dated July 14, 1997 by Dr. Carl A. Foulks, an internist, wherein he indicated that appellant suffered from mouth ulcers and that he believed that this condition was caused or aggravated by her employment activity because appellant was always anxious when at work.

Appellant also submitted an August 21, 1997 medical report by Dr. Antonio Cusi, a psychiatrist, wherein he indicated:

“After a psychiatric evaluation was made it was deemed that [appellant] is suffering from adjustment disorder and mixed emotional features. Stressors that were given and identified were all job related. A change of working environment through a transfer could be the only solution to alleviate her current situation. No mood or thought disorder that was preexisting can be elicited at the current time.”

By letter dated October 9, 1997, the Office of Workers' Compensation Programs requested that appellant submit further information. The Office requested that appellant list specific employment factors, which occurred that may have contributed to her condition. The Office also requested copies of any Equal Employment Opportunity (EEO) complaint, asked her to describe details of stress resulting from activities outside of her employment, to provide

¹ Appellant had previously filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) on July 14, 1997 for the same injury.

details of any prior emotional condition, provide psychiatric reports and also a statement as to why she believed that her work activities caused her condition.

In response, appellant wrote an undated letter, which was received by the Office on October 20, 1997 in which she stated her reasons for requesting a transfer as follows:

“I was being harassed by my [s]enior [r]ater, which indicated to parts of my body as the saying that I have a lot of “junk in my trunk” yelling my name down the halls to embarrass me asking me to do things to satisfy [h]is personal use, he was stressing me out to the point that ulcers developed in my mouth, that I could n[o]t even talk, the sores were open sores that allowed me not to eat, drink and even hurted to swallow. I filed a complaint several times with my battalion commander, but his remarks was to ‘get over it’ that the CPT would be out of command in a few months and that he would be leaving command in two months.”

Appellant also submitted an investigative report wherein the reviewing officer found that appellant was subjected to inappropriate comments.

By decision dated February 15, 1998, the Office found that, although the evidence supported that appellant actually experienced the claimed event, the evidence did not establish that a condition had been diagnosed in connection with this and that, therefore, appellant had not established an injury.²

The Board finds that appellant has not met her burden of proof to establish her claim.

The Federal Employees’ Compensation Act³ does not cover every injury or illness that is somehow related to one’s employment. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. The disability is not compensable, however, when 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.⁴ Actions by coworkers or supervisors that are considered offensive or harassing by a claimant may constitute compensable factors of employment to the extent that the implicated disputes and incidents are established as arising in and out of the performance of duty.⁵

In an occupational disease claim such as this, claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical

² Appellant submitted evidence after the Office’s February 15, 1998 decision. Evidence may not be reviewed for the first time on appeal that was not before the Office at the time it issued its final decision. 20 C.F.R. § 501.2(c); *Donald Jones-Booker*, 47 ECAB 785, 786 (1996); *George A. Hirsch*, 47 ECAB 520, 526 (1996).

³ 5 U.S.C. § 8101 *et seq.*

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

⁵ *Lillie M. Hood*, 48 ECAB 157 (1996).

evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. 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 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.⁶

The Office did accept that appellant's alleged employment factor, verbal harassment by her supervisor, was a compensable factor of employment sustained in the performance of duty. In the instant case, appellant initially submitted in support of her claim a statement by Dr. Cusi that she suffered from adjustment disorder, mixed emotional features and that all her stressors were job related and a medical report in which Dr. Foulks found that appellant's herpes labialis and anxiety disorder were caused by her work because she was "always anxious when at work." These reports do not constitute rationalized medical evidence in support of a causal relationship between factors of her employment and her physical and mental condition. Neither of the physicians provided any explanation on how appellant's ulcerations were caused or contributed by the accepted employment factor.

The decision of the Office of Workers' Compensation Programs dated February 15, 1998 is hereby affirmed

Dated, Washington, D.C.
June 9, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).