

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BONNIE M. BILLEDEAUX and DEPARTMENT OF HOUSING & URBAN
DEVELOPMENT, Seattle, WA

*Docket No. 98-883; Submitted on the Record;
Issued March 23, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant established 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 appellant has not established that she sustained an emotional condition in the performance of duty.

On September 28, 1994 appellant, then a 48-year-old supervisory loan specialist, filed an occupational disease claim, alleging that factors of her employment caused major depression. In an accompanying statement, she alleged that a former employee that she supervised, Jeff Balogh, filed a preliminary sexual harassment charge against her with the Equal Employment Opportunity (EEO) Commission in 1993 and the ensuing investigation was humiliating and stressful. Appellant also indicated that she was overworked. In a January 12, 1995 statement, she stated that the employing establishment was understaffed and set unreasonable time frames for work goals.¹ Appellant had stopped work on July 22, 1994 and returned to work on October 19, 1994.

Following further development, by decision dated March 8, 1995, the Office of Workers' Compensation Programs denied the claim, finding that appellant failed to establish fact of injury. On March 21, 1995 she requested a hearing that was held on May 16, 1996. In a decision dated August 1, 1996, an Office hearing representative affirmed the prior decision, finding that appellant had not sustained an emotional condition in the performance of duty. The facts of this case as set forth in the hearing representative's decision are hereby incorporated by reference. On April 21, 1997 appellant, through counsel, requested reconsideration and submitted

¹ Appellant also described personality problems with her new supervisor after her return to work in October 1994, that she did not get her old job back at that time and was not properly trained for the new position. The Board notes that these factors are not germane to the instant claim, that was filed on September 28, 1994.

additional evidence. In a November 26, 1997 decision, the Office modified its prior decision, finding that appellant established that her increased workload and insufficient staffing at the employing establishment were compensable factors of employment. The Office, however, denied the claim, finding the medical evidence insufficient to establish causal relationship. The instant appeal follows.

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.² Workers' compensation law is not applicable to each and every injury or illness that is somehow related to employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.³ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁴

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 illness has some connection with the employment but nevertheless does not come within the coverage of the Act. These injuries occur in the course of employment and have some kind of causal connection with the employment, but are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or to a requirement imposed by the employment coverage may be afforded under the Act. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.⁵ In these cases such feelings are considered to be self-generated by the employee as they arise in situations not related to his or her assigned duties.

² *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Donald E. Ewals*, 45 ECAB 111 (1993); *Lillian Cutler, id.*

Subsequent to the August 1, 1996 decision of the Office hearing representative, Dr. Craig Zarling, appellant's treating Board-certified psychiatrist, submitted a February 17, 1997 report in which he advised:

"The real difficulties at work did contribute to [appellant's] mood disorder and the lack of resolution of the issue of the sexual abuse allegation did limit her ability to function as a supervisor. Additionally, given the symptoms of her depression, the work load she was requested to take on may have been unrealistic. It was the sexual harassment complaint that was directly related to [appellant's] perceived threat of self-esteem, which was subsequently one factor in many that evolved into her experiencing depression."

In a February 27, 1997 statement, Nancy J. Williams, who retired in June 1993, stated that appellant had been her supervisor. She noted that appellant was overworked and that her former supervisor, Ron Duzy, "interfered" and did things against regulations which left appellant physically and emotionally drained. Ms. Williams concluded that Mr. Balogh's charge of sexual harassment was not the cause of appellant's illness, only the "last straw."

Appellant's fiancé, David P. Montross, submitted a March 6, 1997 statement in which he recalled that appellant had been under a lot of stress in December 1993 and January 1994 which he believed was caused by incidences of stress at the workplace. He reported that he called an employing establishment attorney about his concerns.

In a March 21, 1997 statement, appellant indicated that on February 6, 1992 she gave a deposition regarding a nationwide class action suit against the employing establishment which made her nervous. She also submitted a copy of the deposition.

As a general rule, a claimant's reaction to administrative or personnel matters fall outside the scope of coverage of the Act.⁶ Absent error or abuse on the part of the employing establishment, administrative or personnel matters, although generally related to employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee.⁷ Furthermore, an employee's complaints about the manner in which a supervisor performs supervisory duties or the manner in which a supervisor exercises supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor must be allowed to perform his or her duties and that in performance of these duties, employees will at times dislike actions taken. Mere disagreement or dislike of a supervisory or management action is not actionable, absent evidence of error or abuse.⁸ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁹ To support such a claim,

⁶ 5 U.S.C. §§ 8101-8193; *see Janet I. Jones*, 47 ECAB 345 (1996).

⁷ *Gregory N. Waite*, 46 ECAB 662 (1995).

⁸ *Daniel B. Arroyo*, 48 ECAB 204 (1996).

⁹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

a claimant must establish a factual basis by providing probative and reliable evidence.¹⁰ Likewise, an employing establishment must retain the right to investigate if wrongdoing is suspected. As an investigation is generally related to the performance of an administrative function of the employer and not the employee's regular or specially assigned work duties, it is not compensable unless there is evidence that the employer erred or acted abusively.¹¹

Initially, the Board finds that appellant has not established error or abuse in regard to her general allegations regarding treatment by Mr. Duzy or any administrative other administrative matters, including the EEO investigation. The statements of Mr. Montross and Ms. Williams are too general in nature to constitute probative evidence as neither referred to specific incidents that would substantiate appellant's allegations.¹² The Board, therefore, finds that these matters do not constitute compensable employment factors. Overwork, however, may be a compensable factor of employment¹³ and in this case the Board finds that appellant's increased work load and the staffing levels at the employing establishment directly relate to her regularly assigned duties and are, thus, compensable factors of employment.¹⁴ Nonetheless, appellant did not meet her burden of proof to establish that her emotional condition was work related because she did not submit rationalized medical evidence explaining how these factors caused or aggravated her emotional condition.

Dr. Zarling provided several reports and testified at the hearing where he stated that appellant suffered from recurrent major depression. He noted that he began treating her in June 1995 and that her problems began in October 1993. When specifically questioned about the cause of her condition, he stated that it was 60 to 70 percent work related with the sexual harassment charge being a very large factor. Dr. Zarling also submitted a February 17, 1997 report in which he stated that the work load appellant was requested to take on "may have been unrealistic." Appellant also submitted additional medical reports that indicated that her condition was secondary to employment-related stress.

The Board finds that none of these latter reports contains the opinion of a physician relating appellant's condition to specific work factors.¹⁵ Furthermore, Dr. Zarling testified at the hearing that appellant's stress at work was caused by the events and investigation surrounding Mr. Balogh's EEO complaint. While he later stated that her work load may have been unrealistic, the Board finds this report equivocal and speculative such that it is of diminished

¹⁰ See *Barbara J. Nicholson*, 45 ECAB 843 (1994).

¹¹ *Garry M. Carlo*, 47 ECAB 299 (1996).

¹² *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

¹³ *Robert W. Wisenberger*, 47 ECAB 406 (1996).

¹⁴ See *James W. Griffin*, 45 ECAB 774 (1994).

¹⁵ See *Victor J. Woodhams*, *supra* note 2.

probative value.¹⁶ Appellant therefore failed to establish she sustained an emotional condition causally related to factors of her employment.

The decision of the Office of Workers' Compensation Programs dated November 26, 1997 is hereby affirmed.

Dated, Washington, D.C.
March 23, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

¹⁶ See *William S. Wright*, 45 ECAB 498 (1994).