

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MITZI D. ADAMS and DEPARTMENT OF JUSTICE, BUREAU OF
PRISONS, FEDERAL CORRECTIONAL INSTITUTION, Phoenix, AZ

*Docket No. 98-2457; Submitted on the Record;
Issued March 2, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained an emotional condition while in the performance of duty.

On December 19, 1997 appellant, then a 45-year-old contract specialist, filed a claim for an occupational disease (Form CA-2) alleging that she first realized that her nervous breakdown was caused or aggravated by her employment on May 1, 1997. Appellant's claim was accompanied by factual and medical evidence.

By letter dated June 6, 1998, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish her claim. The Office then advised appellant to submit additional factual and medical evidence supportive of her claim. By letter of the same date, the Office advised the employing establishment to comment on appellant's allegations.

By decision dated July 2, 1998, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition while 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 illness has some connection with the employment, but nevertheless does not come within the coverage of the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters

unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.¹

Perceptions and feelings alone are not compensable. 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 factors of her federal employment.² To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.³

In the present case, appellant has made several allegations. Specifically, appellant has alleged that she transferred from a GS-6 position at the United States Attorney's Office to a GS-5 position at the employing establishment based on the promise of personnel officer Gary Heil that she would get her GS-6 back after she successfully completed training at Glynco. Appellant stated that after she completed the training, she did not receive her GS-6. Further, appellant has alleged that after Mr. Lanphear, an employing establishment supervisor, found out from her friend, Dave Langhorst, that she was willing to pay moving expenses if she was offered a position in Phoenix, Arizona, the phrase "move authorized" was deleted from the job announcement. Appellant noted that she was offered the position, but that she had to pay her own moving expenses. Additionally, appellant has alleged that Terry Lutz, appellant's supervisor, told her not to apply for a trainee position because she was not going to get it. The Board has previously held that denials by an employing establishment of a request for a different job or promotion are not compensable factors of employment under the Act as they do not involve appellant's ability to perform her regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.⁴ Thus, appellant has not alleged a compensable factor of employment under the Act.

Appellant has further alleged that she was harassed and discriminated against by the employing establishment. In an undated narrative statement, appellant stated that women were not treated as equals at the employing establishment, specifically, noting that her captain, Andra S. Bettencourt was not treated fairly. Appellant also stated that she first learned of the rumor that she was a lesbian when Lieutenant Dyan Griffin, an employing establishment supervisor, told her that she would never lose her female qualities and become gay like her and the captain. Appellant further stated that after returning to an employing establishment office in Phoenix, Arizona, the staff advised her that Frank Malara, an employing establishment

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *Michael Thomas Plante*, 44 ECAB 510 (1993).

employee, started telling everyone that she was a lesbian after he found out that she was coming back to the office. Additionally, appellant stated that Mr. Lanphear always used vulgar language and told dirty jokes in her presence and refused to tell the staff to refrain from using such language in her presence. Appellant contended that Richard Reyher, a coworker, called her a “fat bitch.” Appellant also contended that Mr. Reyher told her that he would not save her life as a “SORT” member and that Mr. Reyher conveyed his opinion about her to new staff who believed him. Appellant further contended that the employing establishment discriminated against her in hiring Miguel Hernandez as a foreman, who was promoted overnight to the position of engineer. In a June 22, 1998 response to the Office’s June 6, 1998 letter, appellant stated that she was sexually harassed by Rod Watkins, an employing establishment employee, and that she complained about his behavior to Fred Stock, an employing establishment warden. Appellant then stated that after she reported this behavior, she was no longer harassed by Mr. Watkins. The Board has held that actions of an employee’s supervisor, which the employee characterizes as harassment, may constitute factors of employment giving rise to coverage under the Act.⁵ Mere perceptions alone of harassment and discrimination are not compensable under the Act.⁶ To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations of harassment with probative and reliable evidence.⁷

The specific allegations made by appellant do not establish a pattern of harassment or discrimination by the employing establishment. Regarding appellant’s allegation of name calling, Mr. Lutz provided in an undated response to the Office’s June 6, 1998 letter that appellant told him that Mr. Reyher had called her a “fat bitch” while he was in the break area. Mr. Lutz also provided that, when he confronted Mr. Reyher, he told him that he was not talking about appellant during lunch. Mr. Lutz further provided that the entire staff was counseled about calling other staff names and to watch their language. Mr. Lutz noted that he did not understand why appellant disliked Mr. Reyher. He further stated that appellant was hard on herself and that she thought the other staff was out to get her. Although Mr. Lutz noted that the entire staff was counseled about calling other staff names and to watch their language, appellant has failed to submit evidence to corroborate her specific allegations of harassment. Further, the alleged treatment of Captain Bettencourt by the employing establishment has not been established by the record and does not relate to appellant’s regular or specially assigned work duties. In addition, appellant has failed to submit evidence supportive of her allegation of discrimination by the employing establishment. Inasmuch as appellant has failed to provide any evidence to corroborate her allegations of harassment and discrimination by the employing establishment, the Board finds that the record is devoid of probative evidence establishing harassment or discrimination in this case. Consequently, appellant has failed to establish a compensable employment factor.

Appellant has also alleged that she was given only one day off to attend her mother’s funeral by Mr. Hobbs, but that she later received permission to remain off work for one week.

⁵ *Donna Faye Cardwell*, supra note 3; *Pamela R. Rice*, supra note 2.

⁶ *Wanda G. Bailey*, 45 ECAB 835 (1994); *William P. George*, 43 ECAB 1159 (1992); *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁷ *Ruthie M. Evans*, supra note 6.

Appellant stated that Mr. Hobbs never forgave her for this incident. In her June 22, 1998 narrative statement, appellant provided that she remained at work following an incident where she had to be escorted from a monthly staff recall by Dr. Grossman because she was terrified of the staff due to the warden's refusal to advance her leave. Further, appellant has alleged that after she and Mr. Hernandez failed to get along, she stopped receiving exceeds and outstanding evaluations and awards. Additionally, appellant alleged that coworkers told Mr. Lutz that she hurt their feelings, that Mr. Hernandez told Mr. Lutz that she was the cause of his back problems, that Mr. Lutz told her about these complaints and that coworkers in Washington, D.C. were going to file a complaint against her because she hurt their feelings. Appellant contended that she received lower performance evaluations due to her lack of communication skills with coworkers. Appellant also contended that she was told by the employing establishment that she could not work in the position of packaging foreman if she did not wear the heavy man's steel-toed shoes, which appellant stated ripped up her knee and caused her to have knee surgery. Appellant further contended that she did not receive an outstanding performance evaluation due to her condition last year according to Mr. Lutz. Appellant's allegations regarding the denial of leave,⁸ her performance evaluations⁹ and the requirement that she wear the steel-toed shoes relate to administrative actions of the employing establishment. Although the handling of such personnel matters is generally related to employment, it is an administrative function of the employer, not a duty of the employee.¹⁰ An administrative or personnel matter will not be considered a compensable factor of employment unless the evidence discloses that the employing establishment erred or acted abusively.¹¹ Concerning appellant's performance evaluations, Mr. Lutz stated in his November 21, 1997 narrative statement that appellant had always received an outstanding or an exceeds evaluation, but that she had received some fully successful elements due to her communication skills with other staff. Regarding appellant's allegations of failing to receive awards, Mr. Lutz stated that appellant had received as many or more awards throughout her years than most other staff. Appellant has failed to submit any evidence establishing that the employing establishment committed any error or abuse in handling the above administrative matters in this case. Therefore, appellant has failed to establish a compensable employment factor under the Act.

For the foregoing reasons, appellant has failed to establish a compensable employment factor under the Act and, therefore, she has failed to satisfy her burden of proof in establishing that she sustained an emotional condition while in the performance of duty.¹²

The July 2, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

⁸ *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Michael Thomas Plante*, *supra* note 4.

⁹ *James E. Woods*, 45 ECAB 556 (1994).

¹⁰ *Anne L. Livermore*, 46 ECAB 425 (1995).

¹¹ *See Sharon R. Bowman*, 45 ECAB 187 (1993).

¹² Inasmuch as appellant has failed to allege a compensable factor of employment under the Act substantiated by the record, the medical evidence need not be discussed. *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

Dated, Washington, D.C.
March 2, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member