

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BARBARA J. EARL and DEPARTMENT OF THE ARMY,  
MARTIN ARMY COMMUNITY HOSPITAL, Fort Benning, GA

*Docket No. 98-2407; Submitted on the Record;  
Issued May 22, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant established that she sustained an emotional condition in the performance of duty.

On June 17, 1996 appellant, then a 44-year-old registered nurse, filed a notice of occupational disease and claim for compensation alleging that she suffered from high anxiety and depression due to harassment at work. She stopped work on June 3, 1996 and has not returned.

In a May 20, 1996 letter, the employing establishment indicated that it sought to suspend appellant for three days from work effective June 18, 1996 for negligence in the performance of duty, unauthorized use of government property, discourteous behavior in a patient care area and failure to cooperate with others.

In a February 7, 1997 letter, appellant stated the following:

“I have been subjected to acts of harassment and [verbal] abuse since joining the staff of [Ward 3B] in September 1993. My head nurse at the time would constantly criticize my work without giving positive feedback or explaining how she would like to see the task carried out. Even though Major Lynch is no longer head nurse she is involved in directing my supervision under present head nurse [Captain] Dormer-Caine. After I was granted the privilege of working seven to three shift [the staff] began a campaign of insubordination and harassment encouraged by management. This led to a closed line of communication between myself and fellow employees. I became increasingly anxious on the job, constantly double checking my work for fear of making a mistake and being written up. I began to suffer anxiety attacks on the job in February 1994 which led to my going to the emergency room with elevated blood pressure.”

In a June 30, 1996 memorandum, appellant's supervisor and head nurse, Hilary M. Dormer-Caine, noted that appellant had been working a 7:00 a.m. to 3:00 p.m. shift since October 30, 1995. She opined that appellant was under no greater stress in her position as a registered nurse than any of her fellow workers. Ms. Dormer-Caine alleged that it was appellant's own use of condescending language and abrasive behavior that closed off the lines of communication between appellant and her coworkers. She also alleged that appellant's emotional condition was self-inflicted and the result of appellant's own choice to conduct herself in an unprofessional and insubordinate manner.

In a letter dated September 18, 1996, appellant alleged: (1) that the employing establishment refused to change her work shift until after her doctor wrote three letters recommending that she be removed from her 11:00 p.m. to 7:00 a.m. shift and placed on the 7:00 a.m. to 3:00 p.m. shift; (2) that Major Lynch was verbally abusive to her and yelled at her in front of her coworkers on February 10, 1994 related to a schedule change; (3) that he reprimanded her on another occasion for eating breakfast at her desk; (4) that in February 1995 she reported to work with a fever and had to approach Major Lynch three times before she was excused to go home; (5) that when she called in the next day to advise Major Lynch that she would be out for two additional days due to illness, she was informed that she would be given unpaid leave for the 16 hours she planned to be off work;<sup>1</sup> (6) after refusing to sign a counseling statement on September 11, 1995, she was physically restrained by Major Lynch; (7) that Major Lynch conducted her performance evaluations in an unprofessional manner; and (8) that management specifically reassigned appellant from a white manager to a black manager to hide a pattern of racial discrimination.

Appellant submitted copies of written complaints prepared by several coworkers, which the employing establishment relied on to support appellant's proposed May 20, 1996 suspension. Appellant alleged that the statements were evidence of a "supervisor sanctioned" letter writing campaign against her.

By letter dated June 2, 1997, the employing establishment advised appellant that it proposed to remove appellant from federal service due to her unavailability for work. It was noted that appellant failed to comply with established leave approval because she did not provide a medical statement every 30 days to justify her continued absence of work. The employing establishment also cited a prior three-day suspension as support for the proposed removal action.

In a decision dated September 12, 1997, the Office determined that appellant had only alleged one compensable factor of employment, which was the February 1995 incident where she was charged with leave without pay for an absence from work and hours were later restored.<sup>2</sup> The Office denied compensation on the grounds that appellant failed to establish that her emotional condition was causally related to alleged employment factor.

On November 14, 1997 appellant requested a review of the written record.

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<sup>1</sup> Appellant noted, however, that she filed a union grievance and had her hours restored under sick leave.

<sup>2</sup> In a statement of accepted facts dated March 21, 1997, the Office noted that the incidents alleged by appellant were either not employment factors or not accepted as factual.

In a decision dated March 6, 1998, an Office hearing representative vacated the Office's September 12, 1997 decision and remanded the case for further consideration. The Office hearing representative specifically questioned the propriety of the Office's finding that appellant alleged a compensable factor of employment with regard to being charged the wrong type of leave.

On remand, the employing establishment submitted a letter dated May 18, 1998 from Willie Varner, which advised:

“Review reveals that [no] formal grievance was filed by the union concerning [appellant's] sick leave in February 1995. Based on information provided by her schedule [appellant] was given leave without pay (LWOP), absence without leave for two days in February 1995. Details are not available as to the reason for the leave, since the supervisor from 1995 is no longer employed at the hospital. The first date February 18, 1995 was changed from leave without pay to annual leave and February 19, 1995 was later changed to sick leave in the pay system, most likely this change occurred when she provided a physician's medical statement to cover the time. The supervisor may have thought she did not have an accrual of sick leave and consequently put it in the system as LWOP.”

In a decision dated July 17 1998, the Office denied compensation on the grounds that appellant failed to allege a compensable factor of employment with regard to issue of LWOP and the other alleged incidents of harassment.

The Board finds that appellant failed to establish that she sustained an emotional condition in the performance of duty.

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

Workers' compensation law is not applicable 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

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<sup>3</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990)

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

The Board has found that an administrative or personnel matter will not be considered to be an employment factor unless the evidence discloses error or abuse on behalf of the employing establishment.<sup>7</sup> In the instant case, appellant's contention that she was improperly monitored and reprimanded by the employing establishment for her conduct with coworkers involves an administrative matter and is generally not a compensable factor of employment. The Board finds that there is no evidence of record to show that the employing establishment acted abusively in issuing appellant a three-day suspension.

Appellant has generally alleged that she was exposed to repeated stress, harassment and discrimination by her supervisor, the head nurse, and her fellow coworkers. 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. However, for harassment to give rise to a compensable disability under the Act, there must be some evidence that harassment or discrimination did in fact occur. Mere perceptions alone of harassment and discrimination are will not support an award of compensation. An employee must substantiate such allegations with probative and reliable evidence.<sup>8</sup>

Although appellant contends that she was subjected to verbal abuse and the "silent treatment," she did not submit any corroborating evidence to support her allegations.<sup>9</sup> The statements from appellant's coworkers do not suggest that the employing establishment in any manner encouraged or coerced them to file complaints against her. The simple existence of coworker complaints does not, in and of itself, establish that the employing establishment sponsored a letter writing campaign against appellant.

Additionally, the Board finds that appellant did not allege a compensable factor of employment when she alleged that her emotional condition was attributable to the incident of

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<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> *Joel Parker, Sr.*, 43 ECAB 220 (1991).

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

<sup>8</sup> *George A. Ross*, 43 ECAB 346 (1991).

<sup>9</sup> Physical contact by a supervisor may support a claim for an emotional condition if substantiated by factual evidence of record; see *Alton L. White*, 42 ECAB 666 (1991). Appellant, however, did not submit factual evidence to establish that she was physically restrained by the head nurse as alleged. She also has not established as factual that Major Lynch yelled at her in front of coworkers or that the motive of the employing establishment in placing appellant under the supervision of a black head nurse was to cloak a pattern of discrimination against her. The Board also does not find that the employing establishment acted abusively in delaying appellant's reassignment to a different work shift, as that decision falls within its administrative purview.

being charged LWOP. The handling of leave is an administrative function and there is not evidence of record to establish that the employing establishment erred or acted abusively in the handling of appellant's leave request. Even though the employing establishment ultimately changed appellant's LWOP to sick leave, that action alone does not establish error or abuse. Because there is no finding of error or abuse by a grievance board or other agency with respect to the leave matter, this Board finds no evidence to establish that appellant sustained an emotional condition in the performance of duty.

The decisions of the Office of Workers' Compensation Programs dated July 17 and March 6, 1998 and September 12, 1997 are hereby affirmed.

Dated, Washington, D.C.  
May 22, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member