

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH GOLDEN and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Oakland, CA

*Docket No. 00-342; Submitted on the Record;
Issued November 6, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

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 this appeal and finds that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On October 6, 1998 appellant, then a 37-year-old tax examiner and account analyst, filed a traumatic injury claim (Form CA-1) alleging that on September 28, 1998 she sustained chest and stomach pain when she was asked to resign. Appellant stated that she started crying, that she could not breathe, that she experienced chest pain and that her stomach started to hurt. Appellant stopped work on September 28, 1998.

By decision dated March 25, 1999, the Office of Workers' Compensation Programs found the evidence of record insufficient to establish that appellant sustained a condition in the performance of duty. In letters dated April 9 and June 29, 1999, appellant requested reconsideration of the Office's decision.

By decision dated September 2, 1999, the Office denied appellant's request for modification based on a merit review.

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

Appellant alleged that her job was threatened when she was asked by the employing establishment on September 28, 1998 to resign from her position. The Board has held that fear of reduction-in-force, a feeling of job insecurity, or fear of losing her job or of demotion, does not constitute a personal injury in the performance of duty.⁴ Additionally, the Board has found that actual termination of employment is not covered under the Act.⁵ Further, the employing establishment's November 16, 1998 letter of decision terminating appellant's employment relates to administrative or personnel matters. The Board has held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee.⁶ The Board has held, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.⁷ Absent evidence of error or abuse, the resulting emotional condition must be considered self-generated and not employment generated.

Appellant submitted a March 16, 1999 settlement agreement between herself and the employing establishment regarding a complaint she filed with the Equal Employment Opportunity Commission due to the latter's decision to terminate her employment. This agreement revealed, *inter alia*, that she was to be reinstated at the employing establishment in a permanent part-time position. Although the agreement required appellant to be reinstated at the

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

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

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

⁴ *Sharon K. Watkins*, 45 ECAB 290 (1994); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, *supra* note 1.

⁵ *Sharon K. Watkins*, *supra* note 4.

⁶ *Thomas D. McEuen*, *supra* note 4.

⁷ *Richard J. Dube*, 42 ECAB 916 (1991).

employing establishment, it clearly indicated that this resolution was made without prejudice to the employing establishment. Specifically, the agreement provided that “[t]his agreement does not constitute an admission by the agency of any violation of applicable civil rights laws, or of any other Federal or state statutes or regulations, or of any fact or allegation.” The mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse.⁸ Inasmuch as appellant has failed to establish that the employing establishment committed error or abuse in terminating her employment, the Board finds that appellant has not established a compensable employment factor under the Act in this respect.

Appellant has not provided the specific information necessary to establish any compensable factors of employment under the Act and, therefore, has not established that she sustained an emotional condition in the performance of duty. In view of this decision, it is unnecessary to consider the medical evidence to determine whether appellant’s emotional condition was causally related to compensable factors of her employment.⁹ Such factors must be identified and established before it can be determined, through medical evidence, whether a claimant’s disability is causally related to such factors.

The September 2 and March 25, 1999 decisions of the Office of Workers’ Compensation Programs are hereby affirmed.

Dated, Washington, DC
November 6, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

⁸ *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

⁹ *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).