

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LORNA L. COBB and DEPARTMENT OF THE NAVY, NAVAL
COMMAND, CONTROL & OCEAN SURVEILLANCE CENTER, San Diego, CA

*Docket No. 98-835; Submitted on the Record;
Issued November 17, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition and resultant physiologic condition, while in the performance of duty.

On April 20, 1995 appellant, a 48-year-old administrative specialist, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained an emotional condition while in the performance of duty. She described the nature of her condition as stress and resultant aggravation of temporomandibular joint dysfunction. Appellant identified March 23, 1995 as the date she first realized her illness was caused or aggravated by her employment. In an accompanying statement, appellant explained that, on March 22, 1995, her supervisor, Linda Kochanski, chastised her in front of other employees for receiving personal telephone calls. The stress arising from this incident apparently caused appellant to clench her teeth while asleep later that evening, thus aggravating her preexisting condition of temporomandibular joint dysfunction. In subsequent statements, appellant identified a number of additional employment factors that purportedly contributed to her ongoing psychiatric and physiologic conditions. These factors included being abruptly moved to a different office in April 1995. Additionally, as a result of being relocated appellant alleged that it became increasingly more difficult to carry out her regularly assigned duties. Appellant also claimed that she had an adverse reaction to the employing establishment's alleged mishandling of her workers' compensation claims. Additionally, she alleged that the employing establishment improperly revoked her security clearance in May 1995, which effectively precluded appellant from performing her previously assigned duties as an administrative specialist.

After further development of the record, the Office of Workers' Compensation Programs issued a decision on April 1, 1996 denying appellant's claim for compensation. The Office explained that appellant failed to establish that her claimed psychiatric and physiologic conditions arose in the performance of duty.

By decision dated April 7, 1997 and finalized on April 9, 1997, an Office hearing representative affirmed the April 1, 1996 decision denying compensation. Appellant subsequently filed a request for reconsideration with the Office on May 13, 1997. She also filed an appeal with the Board on July 3, 1997.¹ While her appeal was pending, the Office issued a decision dated July 15, 1997 denying appellant's May 13, 1997 request for reconsideration.² By decision dated September 25, 1997, the Board dismissed appellant's July 3, 1997 appeal.³ She filed another request for reconsideration with the Office and in a merit decision dated October 30, 1997, the Office denied modification. Appellant subsequently filed an appeal with the Board on January 8, 1998.

The Board finds that appellant failed to establish that she sustained an emotional condition and resultant aggravation of temporomandibular joint dysfunction, while in the performance of duty.

In order to establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition or psychiatric disorder is causally related to the identified compensable employment factors.⁴

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview 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 is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.⁵ Perceptions and feelings alone are not

¹ Docket No. 97-2307.

² The Board finds that the Office did not have the authority to issue its July 15, 1997 decision denying modification. The Board and the Office may not simultaneously exercise jurisdiction over the same issue in a case. *Arlonia B. Taylor*, 44 ECAB 591 (1993). At the time the Office issued its July 15, 1997 decision, appellant had already filed an appeal with the Board regarding the Office hearing representative's April 9, 1997 decision. Inasmuch as the Board had obtained jurisdiction over the case on July 3, 1997, the Office lacked the authority to issue the July 15, 1997 decision denying modification. Accordingly, the Office's July 15, 1997 decision is set aside as null and void. *Terry L. Smith*, 51 ECAB ____ (Docket No. 97-808, issued November 29, 1999).

³ By letter dated September 6, 1997, appellant requested that her appeal, Docket No. 97-2307, be dismissed so that she could submit additional evidence and pursue reconsideration before the Office.

⁴ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.⁶

The evidence of record fails to establish that appellant was subjected to verbal abuse by her supervisor, Ms. Kochanski, on March 22, 1995. While the Board has recognized the compensability of verbal altercations or abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Federal Employees' Compensation Act.⁷ When sufficiently detailed and supported by the record, verbal altercations may constitute a factor of employment.⁸ In the instant case, appellant alleged that Ms. Kochanski chastised and belittled her in front of a coworker for using the telephone for personal calls pertaining to a previously filed Equal Employment Opportunity (EEO) complaint. Ms. Kochanski stated that, on March 22, 1995, three employees advised her that "something was going on with [appellant] and her phone calls." She further indicated that she later went to appellant's office and advised her that she was aware that "[appellant] had been on the phone with personal calls...." Ms. Kochanski stated that she asked appellant "was everything all right?" She further stated that the question was asked in a "normal tone of voice" and that she neither chastised appellant nor admonished her for using the telephone for personal calls. Appellant did not provide any evidence to corroborate her allegation that Ms. Kochanski chastised and belittled her on March 22, 1995. Consequently, the evidence of record fails to establish that appellant was subjected to verbal abuse by her supervisor on March 22, 1995.

Appellant's claimed emotional reaction to the alleged mishandling of her workers' compensation claims is also not covered under the Act. While the employing establishment acknowledged that it had occasionally failed to timely submit certain required documentation concerning appellant's compensation claims the Board has previously held that the development of any condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.⁹

The Board also finds that appellant's claimed emotional reaction to the employing establishment's decision to relocate her to a different office on April 3, 1995 is not covered under the Act. Appellant alleged that this move was undertaken in retaliation for her having previously filed an EEO complaint. The record indicates that the April 3, 1995 office move was undertaken for purposes of space consolidation and renovation. In a memorandum dated March 29, 1995, the employing establishment clearly advised the effected employees that their current office space would be undergoing renovations, which included the installation of new windows. Accordingly, there is no evidence to substantiate appellant's allegation of retaliation. While appellant also complained about the abrupt nature of the move as well as the

⁶ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁷ *Harriet J. Landry*, 47 ECAB 543, 546(1996).

⁸ *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

⁹ *See George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

inconvenience of working in the upstairs vault, an employee's frustration from not being permitted to work in a particular environment is not compensable.¹⁰

With respect to appellant's claimed emotional reaction to the revocation of her security clearance, the record indicates that appellant was advised on May 24, 1995 that her sensitive compartmented information clearances were being suspended based on her failure to meet the standards established regarding emotional, mental and personality disorders. She was further advised that the matter would be forwarded for review by the employing establishment's central adjudication facility. That same day appellant was escorted from the premises and placed on administrative leave. In a memorandum dated October 30, 1995, the employing establishment's central adjudication facility advised appellant of its intent to revoke her security clearance based upon the fact that in August 1995 she had been diagnosed as suffering from adjustment disorder with mixed anxiety and depressed moods. Her security clearance was subsequently reinstated on November 22, 1996.

As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Act.¹¹ However, to the extent that the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹² The record does not establish that the employing establishment erred in its investigation regarding appellant's suitability to retain her security clearance in light of her diagnosed psychiatric condition. Although appellant later regained her security clearance, the mere fact that a personnel action was later modified or rescinded does not, in and of itself, establish error or abuse.¹³ Additionally, while appellant may have developed stress due to insecurity about maintaining her position, the Board has previously held that a claimant's job insecurity is not a compensable factor of employment.¹⁴ Consequently, appellant has failed to implicate a compensable employment factor as a cause for her claimed emotional condition.

Unless a claimant establishes a compensable employment factor, it is unnecessary to address the medical evidence of record.¹⁵ Inasmuch as appellant failed to implicate any compensable factors of employment, the Office properly denied her claim without addressing the medical evidence of record.

¹⁰ *Lillian Cutler*, 28 ECAB 125 (1976).

¹¹ *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

¹² *Id.*

¹³ *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

¹⁴ *See Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

¹⁵ *Gary M. Carlo*, 47 ECAB 299, 305 (1996).

The October 30, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 17, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member