

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PAMELA K. CASANOVA and DEPARTMENT OF THE ARMY,  
WHITE SANDS MISSILE RANGE, White Sands, NM

*Docket No. 99-1112; Submitted on the Record;  
Issued November 27, 2000*

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DECISION and ORDER

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

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

On May 11, 1998 appellant, then a 42-year old management assistant, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that on March 30, 1998 she first realized that her depression was due to her employment. In an attached statement, appellant alleged the following factors as causing her depression: (1) she was reassigned to a new position without sufficient training; (2) she was harassed by her supervisor, Vicente Fresquez; (3) she received a low performance appraisal which she believed was unfair; and (4) she was subjected to hostility from a coworker who would not assist appellant in learning her new position duties. In regards to her difficulty in performing her position, appellant noted that when she started her reassignment that her supervisor did not know what her duties would be although he told her that she "would probably be tracking the budget" even though she had no budgeting background. Appellant noted that prior to receiving her new job description she was given makeshift work to do and that when she requested assistance from her supervisor he would refer her to other personnel outside the division. She also stated that her supervisor provided no guidance on how to perform the budgeting task and even though she attended several budgeting meetings she had no idea what was going on. While appellant did attend budgeting training classes, she alleged that these classes "did not meet the requirements to accomplish my new assignment" and that she continued to ask for assistance and help from other personnel to perform the budgeting tasks assigned to her. In addition, she alleged that her supervisor would give the same task to both her and another coworker without informing either that they were working on the same project. Appellant stated that when she notified her supervisor when she thought something was odd regarding the money spent, he told her to find out why a branch was ordering so many telephones. She stopped work on March 30, 1998 and returned to work on April 27, 1998.

In an April 9, 1998 report, Dr. Karen L. Gold, a psychologist, diagnosed a major depressive disorder which she attributed to appellant's "chronic workplace stress and perception of a hostile environment." She noted that "[t]here has been little or no positive feedback for many months and a serious loss of morale has resulted" and recommended that appellant have a leave of absence and that appellant "clearly requires reassignment and *must not* return to the position which she held prior to becoming ill."

In an April 30, 1998 report, Dr. Vijay Yechoor, an attending Board-certified internist, diagnosed major depression which he attributed to work-related stress. In concluding, he stated that appellant "was advised to be off work until she improved as the work environment appeared to be worsening and precipitating her symptoms."

In a response dated August 28, 1998, the employing establishment submitted responses from Glenn Herman, Director, National Range Operations, and Mr. Fresquez, who enclosed attachments including the job description and major duties of the position of management assistant (office automation), the position evaluation statement, factor evaluation system, evaluation statement and how appellant was selected out of the individuals applying for the position to support his response to the Office of Workers' Compensation Programs' request. In his response, he denied that he had harassed appellant, stated that appellant had been provided any training she requested and that she was given no direction to perform her budgeting work. Mr. Herman, in his response, specifically noted that the employing establishment had made various accommodations to assist appellant in performing her position including providing her any training she requested which included five courses on budgeting, acquisitions and cost tracking as well as training on information systems security and safety.

By decision dated January 14, 1999, the Office found that appellant failed to establish that she sustained an emotional condition in the performance of duty. In support of this conclusion, the Office found that she had failed to establish any compensable employment factor.

The Board finds that the case is not in posture for decision.

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>1</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.<sup>3</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>4</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>5</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>6</sup>

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated January 13, 1999, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegation that she experienced difficulties in performing her new regularly assigned duties, the Board has held that emotional reactions to situations, in which an employee is trying to meet his or her position requirements are compensable. In *Joseph A. Antal*,<sup>7</sup> a tax examiner filed a claim alleging that his emotional condition was caused by the pressures of trying to meet the production standards of his job and the Board, citing the principles of *Cutler*,<sup>8</sup> found that the claimant was entitled to compensation. In *Georgia F. Kennedy*,<sup>9</sup> the Board, citing the principles of *Cutler*, listed employment factors which would be covered under the Act, including heavy workload and imposition of unreasonable deadlines.

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<sup>3</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>4</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>5</sup> *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>6</sup> *Id.*

<sup>7</sup> 34 ECAB 608 (1983).

<sup>8</sup> *See supra* note 2.

<sup>9</sup> 35 ECAB 1151 (1984).

In the instant case, appellant alleged that she sustained her emotional condition because she was striving to successfully perform her duties but was experiencing difficulties because she received no assistance from her supervisor, that she had no budgeting background and that due to this she did not understand what was going on in the budgeting meetings she attended, that when she requested assistance her supervisor would refer her to personnel outside the division, that her supervisor would assign the same task to both her and another coemployee without letting either know they were working on the same project. The Board finds that appellant has submitted sufficient evidence to establish that she experienced problems in attempting to perform her duties and, therefore, she has established a compensable factor of employment.

Regarding appellant's allegations that the employing establishment issued an unfair performance evaluation and the assignment of additional tasks and duties prior to her reassignment after her position was abolished, the Board finds that these allegations related to administrative or personnel matters, unrelated to the employee's regular or specially assigned duties and do not fall within the coverage of the Act.<sup>10</sup> Although the handling of evaluations, providing training and the assignment of work duties are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>11</sup> However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment has erred or acted abusively, the Board has examined whether the employing establishment has acted reasonably.<sup>12</sup>

Appellant also attributed her emotional condition to inadequate training. She stated that she did not receive adequate training to deal with her duties which involved tracking the budget when she had no budget background. Appellant stated she was willing to learn this new task and that she attended several budgeting meetings and that attended three or four budgeting training classes. She alleges that the training classes were insufficient to help her meet the requirements of her new duties.

Training is considered an administrative function.<sup>13</sup> As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>14</sup> Appellant has submitted no evidence in support of

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<sup>10</sup> See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

<sup>11</sup> *Id.*

<sup>12</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>13</sup> *Jose L. Gonzalez-Garced*, 46 ECAB 559, 564 (1995).

<sup>14</sup> *Martha L. Watson*, 46 ECAB 407 (1995).

her allegations that the employing establishment committed error or abuse in the type or amount of training she received.

Lastly, appellant alleged harassment by her supervisor and hostility from a coworker. To the extent that disputes and incidents alleged as constituting harassment and hostility by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.<sup>15</sup> Mere perceptions of harassment or discrimination are not compensable under the Act.<sup>16</sup> In the present case, the employing establishment denied that appellant was subjected to harassment or hostility from a coworker and appellant has not submitted sufficient evidence to establish that she was harassed or subjected to hostility by her supervisor or coworker. Therefore, the Board finds that appellant has failed to show any error or abuse on the part of the employing establishment.<sup>17</sup>

In the present case, appellant has identified a compensable employment factor with respect to her difficulty in performing her regular and specifically assigned duties. As appellant has implicated a compensable employment factor, the Office must base its decision on an analysis of the medical evidence. As the Office found there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded to the Office for this purpose.<sup>18</sup> After such further development as deemed necessary, the Office should issue an appropriate decision on this matter.

On remand, the Office must carry out the further development as directed by this decision as well as any other development as it may find necessary. It should then issue a comprehensive *de novo* decision on whether appellant sustained an emotional condition that was causally related to factors of employment as defined by *Cutler*.

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<sup>15</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>16</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>17</sup> See *Alberta Kinloch-Wright*, 48 ECAB 459 (1997) (finding that appellant's own perception of harassment and hostility from her supervisor were neither specific nor independently corroborated and were therefore not compensable under the Act); *Sandra F. Powell*, 45 ECAB 877, 886 (1994) (finding that an employee's mere perception of harassment or discrimination was not compensable); *Chester R. Henderson*, 42 ECAB 352, 356 (1991) (finding that appellant's mere allegation of harassment, without any witness' statements in support, was sufficient to establish that actual harassment had occurred).

<sup>18</sup> See *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

The decision of the Office of Workers' Compensation Programs dated January 14, 1999 is hereby set aside and the case remanded for further proceedings consistent with the above opinion.

Dated, Washington, DC  
November 27, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member