

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BREDA C. KIELY and DEPARTMENT OF LABOR, OFFICE OF  
WORKERS' COMPENSATION PROGRAMS, San Francisco, CA

*Docket No. 99-2134; Submitted on the Record;  
Issued November 14, 2000*

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DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,  
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 finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition 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 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>

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 employment factors.<sup>3</sup> This burden includes the submission of a detailed

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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).

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

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 of Workers' Compensation Programs, 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 July 1997 appellant, then a 34-year-old claims examiner, alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated January 27, 1998, the Office denied appellant's claim on the grounds that she did not establish any compensable employment factors. By decision dated June 7, 1999, the Office affirmed its January 27, 1998 decision. The Board must, thus, initially review whether these alleged incidents are covered employment factors under the terms of the Act.

Appellant alleged that she developed stress because she was subjected to harassment and discrimination by a supervisor, Johnny Dawkins. She claimed that when she went to speak to Mr. Dawkins on June 18, 1997 about cases being pulled from her desk, he subjected her to abusive language, told her to "get away from my desk," stated, "I don't care about your problems," and threatened to transfer her to another position. Appellant alleged that in March 1997 Mr. Dawkins told her that he did not care about her feelings, that in December 1996 he called her "defensive," and that in October 1996 he spoke abusively to her about the use of the printer. She alleged that in July 1996 Mr. Dawkins angrily told her not to leave punched paper holes on the floor and not to screen her cases in a certain area. Appellant alleged that in October 1995 Mr. Dawkins abusively criticized her handling of incoming mail and made a coworker watch her handle the mail. She claimed that Mr. Dawkins often used abusive language in meetings, made hostile comments to several coworkers and generally seemed to discriminate against women. Appellant also alleged that she heard part of a conversation in which a coworker made derisive comments about her.

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.<sup>7</sup> However, for harassment or discrimination to give rise to a compensable disability under the Act,

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

there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.<sup>8</sup>

In this case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by Mr. Dawkins or a coworker.<sup>9</sup> Mr. Dawkins indicated that he did not threaten to transfer appellant, but merely informed her that she could request a transfer.<sup>10</sup> Appellant alleged that Mr. Dawkins and a coworker made statements and engaged in actions which she believed constituted harassment and discrimination, but she provided no corroborating evidence, such as witness statements, to establish that the alleged statements were actually made or that the actions actually occurred.<sup>11</sup> Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Appellant alleged that the employing establishment improperly handled her attempts to transfer to another position after the June 18, 1997 incident and otherwise failed to accommodate her medical condition. She claimed that in October 1995 a supervisor, Ed Bound, unfairly criticized her work performance. Appellant generally alleged that her work was overly scrutinized and improperly assigned.

Appellant's allegations that the employing establishment engaged in improper criticism of her performance, mishandled her transfer request, improperly assigned work duties and unreasonably monitored her activities at work relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.<sup>12</sup>

Although the evaluation of work performance, the management of transfer requests, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>13</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 erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>14</sup>

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<sup>8</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>9</sup> *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>10</sup> He also denied making the other statements attributed to him by appellant.

<sup>11</sup> *See William P. George*, 43 ECAB 1159, 1167 (1992). Appellant submitted several statements of coworkers but none of the coworkers actually witnessed the incidents alleged by appellant.

<sup>12</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>13</sup> *Id.*

<sup>14</sup> *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

There is no evidence that the actions of appellant's supervisor in dealing with her work assignments or administrative matters were unreasonable.

Appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant indicated that she experienced stress when she missed deadlines because files were pulled from her desk. The Board has held that emotional reactions to situations in which an employee is trying to meet her position requirements are compensable.<sup>15</sup> However, appellant did not adequately articulate her claim in this regard or otherwise submit sufficient evidence to establish its factual basis.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.<sup>16</sup>

The decision of the Office of Workers' Compensation Programs dated June 7, 1999 is hereby affirmed.

Dated, Washington, DC  
November 14, 2000

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>15</sup> See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

<sup>16</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).