

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUTH N. WILSON and DEPARTMENT OF THE NAVY,
HUMAN RESOURCES OFFICE, Washington, DC

*Docket No. 99-2223; Submitted on the Record;
Issued November 28, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has any disability after March 4, 1997 causally related to factors of her employment.

On February 7, 1994 appellant, then a 40-year-old computer programmer analyst, filed a claim for compensation for emotional distress, panic attack, depression, anxiety and post-traumatic stress disorder. She indicated that, in 1991, her supervisor, Brenda Miller, harassed and verbally abused her on several occasions and issued notifications of admonishment for various matters such as not attending a command conference, not attending an employee's picnic and reading material while other employees were discussing luncheon plans. After Ms. Miller was transferred, appellant stated that she was not subjected to harassment or demeaning conduct for approximately a year. She commented that she noted a decrease in the level, amounts and quality of work she was assigned over which she registered complaints with her superiors. Appellant related that in October 1992 she sought medical treatment for stress-induced anxiety after noting a deterioration in her relationship with Linda Kane, her second line supervisor. She alleged that Ms. Kane began making personal comments about her clothing and her habit of bringing in cakes and candy for her coworkers. Appellant noted that she was admonished in April 1993 for a joke she made that was poorly received by a supervisor. She stated that on May 10, 1993 she received a notice of proposed suspension for correspondence with a supervisor, Mr. Repp, that was deemed inappropriate although she claimed that the correspondence was conducted in friendship. Appellant indicated that Mr. Repp subsequently embarrassed her in front of her coworkers in a meeting by ordering her to take her seat. She stated that on July 16, 1993 she discussed a work assignment with her supervisor, Stephanie Hume and then entered into a conversation with two coworkers near her workstation. Appellant related that Ms. Hume approached her in a hostile manner, accusing appellant of talking about her. She indicated that Ms. Hume continued to shout accusations at her even though the coworkers told Ms. Hume that she was in error. Appellant stated that she cried after the encounter. Ms. Hume then brought her to Ms. Kane's office where Ms. Kane admonished her for unprofessional behavior. Appellant replied that the behavior would end when the harassment

ended. Ms. Kane then indicated that appellant was being disrespectful. She received a notice later that day to report for a counseling session for disrespectful and disruptive behavior. Appellant stated that, on July 21, 1993, she received a second notice of proposed suspension.

Appellant indicated that, on August 13, 1993, she had used a supervisor's typewriter to request that the NAACP sponsor a meeting at the employing establishment. She stated that, at approximately 3:00 p.m., a security officer approached her desk and stated that there had been three complaints that she was carrying a weapon. He indicated that he had to search appellant's personal belongings. Appellant indicated that she submitted to a search of her purse, bag and knapsack. She commented that the incident was one of the most humiliating experiences in her life. Appellant indicated that she became depressed and sought medical help. She noted that she made several requests for reassignment which were either denied or ignored.

Appellant related that, on October 7, 1993, when she returned from three days of sick leave, Ms. Hume requested a medical certification for the sick leave. She stated that the requirement was contrary to employing establishment rules but she submitted the certification to avoid being charged as absent without leave (AWOL). Appellant reported that she filed a request for a parking space on that day but subsequently learned that her request had been altered to show that the request had been submitted on October 17, 1993, thereby depriving her of a parking space at the employing establishment.

On November 2, 1993 appellant received a letter of caution, restricting her use of leave. She also received a performance evaluation of minimally satisfactory. Appellant stated that, on November 30, 1993, she used annual leave because she had car problems. She indicated that she called in the information but was unable to reach Ms. Hume or Ms. Kane. Appellant therefore left a message for Ms. Kane. On December 8, 1993 Ms. Hume told appellant that she would not be given leave for that day but would be considered AWOL because she had not talked to Ms. Hume or Ms. Kane directly to request leave. Appellant indicated that she went to Ms. Kane, asked her to instruct Ms. Hume to stop harassing her and asked her never to speak to her again. She gave the leave slip to Mr. Repp, the next official in the chain of command, and asked him to have Ms. Hume stop harassing her over petty matters. Appellant then saw Mr. Gay, Mr. Repp's superior, and requested an immediate reassignment. He replied that reassignments were based on the needs of the organization. Appellant indicated that she talked to an Equal Employment Opportunity (EEO) counselor and then returned to her workstation. She was then approached by building security and escorted from the employing establishment. She did not return thereafter.

Ms. Hume indicated that, in the July 15, 1993 incident, she did not verbally abuse appellant but only told appellant that she had not accused appellant of doing anything wrong. She stated that appellant began yelling and shouting at her. Ms. Hume walked away from appellant. In the November 2, 1993 letter of caution, Ms. Hume indicated that appellant had used 136 hours of annual leave, most of it unscheduled and 144 hours of sick leave in the period March 21 to October 2, 1993. Appellant was required to request annual leave in advance and informed that requests for annual leave over the phone would not be granted except in cases of true emergencies. Several officials at the employing establishment indicated that, on December 8, 1993, appellant was overheard saying, "I [a]m going to kill someone" as she left the EEO counselor's office. Mr. Gay therefore ordered that appellant be escorted from the employing establishment and gave her a notice of proposed removal.

In a December 16, 1994 decision, the Office of Workers' Compensation Programs rejected appellant's claim on the grounds that the evidence of record failed to demonstrate that the claimed injury occurred in the performance of duty. Appellant requested a hearing before an Office hearing representative which was conducted on August 16, 1995. In a December 14, 1995 letter, the Office hearing representative found that, although most of the incidents alleged by appellant either did not occur within the performance of duty or were not established to have occurred, the incident in which appellant's personal belongings were searched for a weapon was a compensable factor of employment. She therefore set aside the Office's December 16, 1995 decision and remanded the case for referral of appellant to an appropriate specialist for an examination and opinion on whether appellant had any conditions causally related to the accepted compensable factor of employment. In an April 19, 1996 decision, the Office rejected appellant's claim on the grounds that the medical evidence failed to demonstrate a causal relationship between the compensable factor of employment and appellant's claimed condition or disability. Appellant again requested a hearing before an Office hearing representative which was conducted on August 22, 1996. In a November 5, 1996 decision, finalized November 7, 1996, the second Office hearing representative found that there was a conflict in the medical evidence on whether appellant's condition and disability were causally related to the compensable factor of employment. She therefore set aside the Office's April 19, 1996 decision and remanded the case for referral of appellant to an appropriate impartial medical specialist to resolve the conflict in the medical evidence. In an April 8, 1998 decision, the Office found that the medical evidence of record showed appellant recovered from an employment-related adjustment disorder with mixed features as of March 4, 1997. The Office therefore terminated compensation as of that date.¹ Appellant requested a hearing before an Office hearing representative which was held on December 8, 1998. In a March 24, 1999 decision, finalized April 5, 1999, the third Office hearing representative found that the weight of the medical evidence, as represented by the report of the impartial medical specialist, established that appellant did not sustain a disabling work-related psychiatric condition. He therefore affirmed the Office's April 8, 1998 decision.

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

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. 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. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.² When the evidence demonstrates feelings of job insecurity and nothing more,

¹ The Office paid temporary total disability compensation for the intermittent periods between April 1, 1994 through June 30, 1995 and paid compensation for a 41 percent loss of wage-earning capacity for the period July 1, 1995 through March, 1997, based on appellant's actual earnings during the latter period.

² *Lillian Cutler*, 28 ECAB 125 (1976).

coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.³ In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.⁴

Appellant made a general allegation that her emotional condition was due to harassment by her supervisors. The actions of a supervisor which an employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.⁵

Appellant contended that many of the actions taken by her supervisors amounted to harassment. However, she has not submitted any corroborative evidence to establish that the actions were taken with an intent to harass her. Most of the incidents described by appellant were related to disciplinary actions taken in her case, such as notices of suspension, referral to counseling, restriction of leave, and the decision to remove appellant after she reacted to a denial of annual leave. These matters are administrative in nature and unrelated to appellant's assigned work duties. Therefore, they are not compensable factors of employment unless it could be shown that the actions were erroneous or abusive. While appellant has alleged error and abuse on the part of her supervisors, the evidence of record does not support such a finding.⁶ Appellant noted that requests for reassignment were denied. These requests reflected a desire to work in a different work environment and therefore would not be part of appellant's assigned duties. Appellant contended that Ms. Hume and Ms. Kane verbally harassed her on several occasions. However, the evidence does not establish such harassment actually occurred but showed that appellant engaged in arguments with her supervisors, particularly in the incident of July 16, 1993 when Ms. Hume approached appellant while she was conversing with two coworkers. Appellant claimed that her application for a parking space was altered so as to deprive her of a parking space at the employing establishment. Appellant, however, did not establish who changed her application, which would form the basis of a finding of error or abuse on the part of the employing establishment. She contended that the quantity, quality and difficulty of her work assignments decreased. While this factor relates to appellant's assigned duties, she did not submit any evidence to establish that there was such a change in her work assignments. The only

³ *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

⁴ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁵ *Joan Juanita Greene*, 41 ECAB 760 (1990).

⁶ The Board notes that an administrative law judge of the Merit Systems Protection Board affirmed the employing establishment's decision to remove appellant.

compensable factor of employment established by appellant was the search of her personal items for a gun, which was done in error. The question therefore becomes whether this factor caused or contributed to appellant's emotional condition.

In an April 24, 1994 report, Dr. Angela Hill, a Board-certified psychiatrist, noted that appellant complained about the treatment she received from her supervisors. She indicated that appellant focused on what she believed to be injustices in her treatment at work and continued to show considerable anger and an extremely volatile demeanor. Dr. Hill commented that appellant appeared to have very little capacity for introspection or self-reflection and continued to show considerable anger and projection of blame on others. She diagnosed borderline personality disorder and mixed personality disorder.

In an August 19, 1994 report Dr. William W. Basham, a specialist in emergency medicine, described several incidents of appellant's employment. Dr. Basham diagnosed adjustment disorder with mixed emotional features and recurrent major depression. He concluded that appellant's depression and adjustment disorder were related to work stress. Dr. Basham stated that appellant had no prior history of work problems or of psychiatric difficulty. He indicated that appellant's psychiatric problems began only after conflicts at work began.

After the decision of the first Office hearing representative, the Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Barton L. Kraff, a Board-certified psychiatrist, for an examination and second opinion. The Office, in the statement of accepted facts, described the employment factors that were found to be not compensable, the factors that were not established to have occurred and the search of appellant's personal belongings that had been found to be a compensable factor. In a March 1, 1996 report, Dr. Kraff diagnosed a major depressive episode in partial remission. He concluded appellant suffered a psychiatric condition resulting from multiple work stresses which, in total, caused her condition. Dr. Kraff stated that it was not possible to determine which particular stressful incident led to which component of appellant's illness. He indicated that the psychiatric illness disabled appellant from work as a computer specialist or any other work until March 1995. Dr. Kraff commented that appellant still suffered from a work-related psychiatric condition although she was much improved.

In an October 14, 1996 report, Dr. Basham stated that appellant was first seen for severe depression on August 19, 1993, six days after the search of her personal belongings at the employing establishment. He noted that she was diagnosed with severe depression and specifically cited in her history the false allegation that she had a gun at work. Dr. Basham indicated that appellant was treated with anti-depressant medical at that time for the first time in her life. He concluded that, since appellant's first depression requiring medication occurred just six days after the search, that incident was the proximate cause of her severe breakdown and depression. Dr. Basham commented that, although appellant was depressed due to other factors at work, the compensable incident of August 13, 1993 was the main cause of her decompensation which led to her eventual hospitalization for depression and her removal from her job.

After the second Office hearing representative found a conflict between Drs. Kraff and Basham, appellant was referred to Dr. Lawrence Brain, a Board-certified psychiatrist. In a March 4, 1997 report, Dr. Brain diagnosed a resolved adjustment disorder with mixed features and a borderline personality disorder. He stated that the adjustment disorder was precipitated by the events of August 13, 1993 when appellant's belongings were searched. Dr. Brain added, however, that appellant was at no time disabled for work due to this condition. He indicated that the condition resolved within several weeks. Dr. Brain concluded that appellant's underlying borderline personality disorder was self-generated and substantially contributed to the workplace difficulties which culminated in appellant's impulsive and inappropriate statements that ultimately resulted in the termination of her employment. He stated that this result could not be considered a compensable outcome of employment but the result of appellant's personality disorder working within the workplace. Dr. Brain concluded that appellant's impediments to effective work were based on self-generated perceptions and actions. He indicated that appellant currently did not suffer from any work-related psychiatric condition. Dr. Brain commented that Dr. Basham overstated the severity of appellant's depression and did not speak to the issue of the underlying personality disorder. He therefore disagreed with Dr. Basham's report.

At the December 8, 1998 hearing, Dr. Basham indicated that he disagreed with Dr. Brain's diagnosis of borderline personality disorder. He commented that a personality disorder would be something appellant had from early childhood while depression can be related to some loss, particularly losing a job. Dr. Basham stated that the adjustment disorder was what appellant was having while she was going through the work situation. He indicated that the adjustment disorder led to appellant's termination from work because she was over-emotional and was ripe for emotional outbursts. Dr. Basham commented that appellant's depression went with the adjustment disorder. He stated that appellant continued to be partially disabled due to depression. Dr. Basham indicated that the adjustment disorder would have ceased but appellant's depression was a chronic problem. He testified that appellant did not fit the criteria for a borderline personality disorder except for intense, inappropriate anger or lack of control of anger. Dr. Basham stated that appellant's condition more closely fit the criteria for depression. He commented that the diagnosis of borderline personality disorder was a misdiagnosis based on one episode of anger in Dr. Brain's office.

The Office referred appellant to Dr. Brain on the grounds that there was a conflict in the medical evidence between Drs. Kraff and Basham. However, Dr. Kraff stated that appellant's condition was related to all the work stresses she had experienced, whether the stresses were considered compensable factors of employment or not. He commented that it was impossible to identify one particular factor which caused appellant's disability. Dr. Kraff's report, therefore, reached a conclusion that the incident in which appellant's belongings were searched contributed to the cause of the depression he diagnosed. Dr. Basham's reports, therefore, did not conflict with Dr. Kraff's report in the conclusion that appellant's psychiatric condition was related to at least one compensable factor of her employment. As there was no conflict in the medical evidence between appellant's personal physician and a physician acting on behalf of the Office,⁷ Dr. Brain cannot be considered an impartial specialist. Dr. Brain diagnosed borderline personality disorder which he concluded was an underlying condition unrelated to appellant's

⁷ See 5 U.S.C. § 8123(a).

employment. He stated that appellant had an adjustment disorder which was not disabling and did not last more than a few weeks. Dr. Brain disagreed with Dr. Basham's diagnosis. In return, Dr. Basham disagreed with Dr. Brain's diagnosis of a borderline personality disorder, stating that appellant's condition was closer to the criteria for depression rather than a borderline personality disorder. He commented that appellant remained partially disabled due to depression. There is, therefore, a true conflict in the medical evidence between Dr. Brain on the one hand and Drs. Basham and Kraff on the other hand. The case must therefore be remanded for resolution of this conflict.

On remand, the Office should refer appellant, together with a statement of accepted facts and the case record, to an appropriate impartial specialist for an examination. The specialist should provide a diagnosis of appellant's condition, giving reasons for his diagnosis. He should then give his opinion on whether appellant's condition was causally related, in whole or in part, to the August 16, 1993 search of appellant's personal belongings. The specialist should then discuss whether appellant had any employment-related disability, total or partial, after March 4, 1997.

The decision of the Office of Workers' Compensation Programs dated March 24, 1999 is hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, DC
November 28, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Valerie D. Evans-Harrell
Alternate Member