U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLOTTE A. ELLIOTT and DEPARTMENT OF THE NAVY, NAVAL AVIATION DEPOT, POWER PLANT DIVISION, Jacksonville, FL

Docket No. 99-1860; Submitted on the Record;
Issued October 2, 2000

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI, PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty as alleged.

On September 12, 1997 appellant, then a 47-year-old machinist, filed a claim for an emotional stress condition, which she attributed to a retaliatory job transfer, gender bias and harassment on or before August 6, 1997, related to working an unauthorized double shift from April 4 to 5, 1997.[1] By decision dated March 3, 1998, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she failed to establish that the claimed condition occurred within the performance of duty.[2] Appellant disagreed with this decision and in a March 27, 1998 letter requested a hearing before a representative of the Office's Branch of Hearings and Review, held November 4, 1998.

By decision dated and finalized January 15, 1999, the Office hearing representative affirmed the Office's March 3, 1998 decision, finding that the job transfer was a reasonable administrative action not evincing error or abuse, that appellant's frustration over not having a desired position was not compensable and that her allegations of harassment and discrimination were not established. The hearing representative also found that appellant had established that Mr. Alvin Edwards, a supervisor, questioned her on approximately July 19, 1997 as to why she took 122 hours to complete a 32-hour job and that Mr. Garvin, a supervisor, spoke to appellant on July 12, 1997 regarding a discrepancy as to what time she clocked in. However, the hearing representative also found that these were reasonable administrative actions and were not

[1] Appellant stopped work on July 21, 1997 and returned to full-duty work August 4, 1997.

[2] The Office found that appellant's condition was due to self-generated frustration over not holding the position she desired and that allegations of harassment by supervisors and coworkers were uncorroborated.

compensable. As appellant did not establish a compensable employment factor, the hearing representative did not address the medical evidence.[3]

In this case, appellant alleges that she sustained a disabling emotional condition due to factors of her federal employment. When working conditions are alleged as factors in causing 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.[4] When a claimant fails to implicate a compensable factor of employment, as in this case, the Office should make a specific finding in that regard.

To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence. Perceptions and feelings alone are not compensable.[5] In this case, appellant asserts that her transfer to building 101 was as punishment in retaliation for working an unauthorized double shift from April 4 to 5, 1997 and that she sustained emotional stress from disliking her new duties and being denied a transfer back to building 797. The Board has held, however, that disabling conditions resulting from an employee's desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Federal Employees' Compensation Act.[6]

The record establishes that appellant disliked operating the numerically controlled machines. According to appellant's statements, on April 21, 1997 she told Mr. Edwards that she

[3] In a July 31, 1997 report, Dr. William Raleigh Thompson, Jr., an attending family practitioner, noted that appellant presented on July 21, 1997 "extremely stressed with psychiatric cyclic depression and anxiety syndrome … apparently associated with a conflict at work and after careful questioning [Dr. Thompson] could isolate no other reason." He prescribed Paxil, which produced some improvement by July 30, 1997. Dr. Thompson released appellant to return to work on August 4, 1997 and recommended continued follow up. In an August 5, 1997 slip, Dr. R.F. Munn, a physician at the employing establishment health clinic, recommended that appellant "work in an air-conditioned environment." In an August 5, 1997 dispensary permit, he restricted appellant to light duty and checked a box that it was "questionable" as to whether appellant's condition was work related. In a November 3, 1997 report, Dr. Thompson noted that appellant's rosacea was "extremely sensitive to extremes in temperature," and that "she be allowed to stay in an air-conditioned environment. In addition, unnecessary stress, unrealistic demands and emotional harassment certainly have caused exacerbations of the disease." In a March 2, 1998 report, Dr. Thompson suggested that appellant "be removed from work" due to job stress, producing "insomnia, palpitations, unstable blood pressure and irregular bowels. … [Appellant's] symptoms and her physical ailments have been directly related to the stress situation at work." Dr. Thompson noted providing counseling, medication and a stress management program.

[4] *See Barbara Bush*, 38 ECAB 710 (1987).

[5] *Ruthie M. Evans*, 41 ECAB 416 (1990).

[6] *David G. Joseph*, 47 ECAB 490 (1996); *Martin Standel*, 47 ECAB 1306 (1996); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *Lillian Cutler*, 28 ECAB 125 (1976).

felt happier and "more productive" working on the machines in building 797.[7] On May 29 and June 19, 1997 appellant requested a transfer back to building 797, which was denied.[8] On June 7 and July 14, 1997 appellant informed supervisors that she preferred her previous duties in rework to "button pushing." At the November 4, 1998 hearing, appellant reiterated that she felt unproductive working the numerically controlled machines and disliked manufacturing bushings. However, as noted above, appellant's desire to perform "rework" duties on noncomputerized equipment is not compensable, nor is her frustration at not being granted a transfer back to building 797.

Appellant's dislike of her new duties and perception of her transfer as a punishment does not establish that the transfer was retaliatory. The Board has found that, while administrative or personnel matters, such as job transfers, are not generally related to the duties of the employee, they 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.[9] The Board notes that the record details several factors indicating that the transfer was administratively reasonable.

First, the Board notes that appellant's machinist position required operating "all types of conventional [and] numerically-controlled (NC) machines … in the manufacture, rework and repair of aircraft parts…." Thus, the Board finds that operating the numerically controlled machines in building 101 was precisely within the scope of appellant's duties and it was reasonable for the employing establishment to require her to perform those tasks.

Second, the record demonstrates that the transfer was necessitated by staffing needs. In a December 2, 1997 statement, Mr. Edwards explained that appellant was selected for transfer in April 1997 due to her skills and experience, as well as "excessive work load requirements" in the building 101 shop. She was retained in the building 101 shop due to a personnel shortage during the third quarter of 1997. Mr. Edwards noted that appellant's position was not affected by this shortage and that she had complained there was not enough overtime available.[10] Similarly, in a December 9, 1997 letter, supervisor Jim Thornton stated that appellant was "well suited" for the building 101 job due to her specific skills, in addition to liking night shift and overtime work, which were frequent occurrences due to the production backlog.

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[7] In a December 2, 1997 statement, Mr. Edwards recalled that appellant asked him when she would be transferred back to building 797 "[e]ach day and sometimes more than once daily." In a December 14, 1997 letter, Hubert Gib Woodward, appellant's work leader, stated that appellant's "desire to return to building 797 was a daily request!!"

[8] In the June 5, 1997 letter, Mr. Thornton stated that the work load in the building 101 shop was "very critical and [appellant] was needed to assist in meeting critical demands. If future work load permits [appellant's] request may receive consideration."

[9] *See Richard Dube*, 42 ECAB 916 (1991).

[10] In a December 2, 1997 letter, Mr. Edward calculated that appellant could have worked "11 hours more overtime" in her job in building 797 and declined 36 hours of overtime work for the period April 21 to September 5, 1997." Also, appellant did not attribute the claimed condition to overwork.

Third, the record indicates appellant received adequate support in her new position, including training on the numerically controlled machines. In an October 31, 1997 letter, appellant stated that she was given eight hours of on-the-job training when transferred to building 101. In a December 2, 1997 letter, Mr. Edwards explained that appellant received the customary "on-the-job" training on the numerically controlled machines and that she was teamed "one-on-one" with a skilled coworker to assist her.[11]

Therefore, the transfer does not constitute a compensable factor of employment, as appellant submitted insufficient evidence to establish administrative error or abuse.[12]

Appellant also attributed her emotional condition to alleged harassment by her supervisors. She submitted a description of these incidents, to which the employing establishment provided written responses. The Board notes that, in order to establish compensability under the Act, there must be evidence that harassment did, in fact, occur. Unfounded perceptions of harassment do not constitute an employment factor and that mere perceptions are not compensable under the Act.[13] As applied to this case, appellant's own perceptions that she was harassed, without corroborating evidence, are insufficient to establish that harassment occurred.

Appellant alleged that, supervisor Jessie Laird spoke to her from approximately July 12 to 17, 1997 about taking "too much time" to produce finished parts and wrongly accused her of producing a defective part. In a March 12, 1998 statement, Mr. Garvin noted that, during a July 12, 1997 conversation with appellant regarding when she clocked in that day, "Mr. Laird's tone of voice was very demeaning and condescending toward [appellant.]" The Board finds that Mr. Laird's conversations with appellant about her rate and quality of production were within his customary supervisory duties. The Board further finds that Mr. Garvin's statement pertaining to Mr. Laird's tone of voice is insufficient to establish harassment.[14]

Appellant also alleged that, on July 18, 1997, Mr. Edwards "rais[ed] his voice" to her for producing only two parts in eight hours on July 17, 1997, asked her to write a memorandum on July 19, 1997 as to why she had produced only two parts and noted he would monitor her production. In a December 2, 1997 response, Mr. Edwards noted that appellant had taken 122 hours out of a total of 171 expended by the shop to complete a 32-hour production job. Mr. Edwards explained that, on July 17, 1997, appellant produced only two parts out of a required ten and thus determined on July 18, 1997 that he needed to periodically review her production and obtain a written explanation of her excessive labor charges. The Board has

[11] In a December 2, 1997 statement, Mr. Edwards noted that, in August 1997, appellant was transferred to a "bushings" position within the same general area to "allow time for [appellant] to relieve her perceived stress" over working in building 101. Mr. Edwards noted that the exacting nature of operating the numerically controlled machines could be "stressful," but that appellant was assigned no tasks of unusual difficulty.

[12] *See Frederick D. Richardson*, 45 ECAB 454 (1994); *see Richard Dube*, 42 ECAB 916 (1991).

[13] *Kathleen D. Walker*, 42 ECAB 603 (1991).

[14] *Carolyn S. Philpott*, 51 ECAB ___ (issued November 18, 1999). (The Board held that a supervisor raising his voice to the claimant did not in and of itself constitute verbal abuse or administrative abuse).

examined appellant's account and the employing establishment's response, including a schedule documenting appellant's excessive labor charges and finds that Mr. Edwards' requests for memoranda and close monitoring of her production, were well within the scope of his usual and customary supervisory duties and did not constitute error or abuse.

Appellant also alleged that, on July 19, 1997, Mr. Woodward, appellant's work leader, moved appellant to the KT600 machine[15] for training by coworker Charles "Chip" Crowe, whereupon she became upset and tearful and went home."[16] The Board finds that it was reasonable for appellant's work leader to assign appellant for training on a machine in her assigned shop and that there is no evidence that the assignment constituted error or abuse.

Appellant also alleged that, on August 8, 1997, Mr. Edwards asked her to write a memorandum as to how a machine was damaged, while the employee responsible for the damage was not asked to submit a memorandum. Also on August 8, 1997 Mr. Edwards inspected appellant's lathe work but did not examine the production of other workers. In a March 12, 1998 statement, Mr. Garvin, noted that, on August 8, 1997, Mr. Edwards spot-checked the parts appellant produced, but did not inspect the work of other employees producing identical parts. The Board finds that appellant has established as factual that Mr. Edwards inspected appellant's work on August 8, 1997 and not that of her coworkers. However, the Board finds that it was well within Mr. Edwards' supervisory discretion to examine the production of his employees and there is no evidence that such inspection constituted error or abuse.

Appellant also alleged that, on July 18, 1997, she sustained emotional stress when she told her work leader, Mr. Woodward, that she was going out for pizza and he offered to "bring the beer." In a December 14, 1997 letter, Mr. Woodward asserted that his comment about bringing beer was intended as nothing more that "reassurance" to appellant that she was performing well at work. The Board finds that appellant has not submitted sufficient evidence to establish that Mr. Woodward's remark constituted verbal harassment.

In conclusion, appellant has not submitted sufficient evidence to support the alleged incidents of harassment. Accordingly, the Board finds that appellant has failed to substantiate her claims of harassment.[17] Therefore she failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.[18]

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[15] In a December 14, 1997 letter, Mr. Woodward noted that learning the KT600 machine "only required simpl[e] instructions … 5 minutes at most."

[16] In an undated statement, Mr. Crowe noted that Mr. Edwards asked him to train appellant on the KT600 lathe and that, Mr. Laird and Mr. Edwards asked appellant to write memoranda regarding her low production and why the boring bar machine had "crashed."

[17] Appellant also alleged that, on August 18, 1997, Mr. Edwards gave her an unsatisfactory performance rating. However, the Board has held that reactions to assessments of performance are not covered by the Act. *Michael Thomas Plante*, 44 ECAB 510 (1993); *Effie O. Morris*, 44 ECAB 470 (1993).

[18] As appellant failed to establish a compensable factor of employment, the medical evidence need not be considered. *Gary M. Carlo*, 47 ECAB 299, 305 (1996).

The decision of the Office of Workers' Compensation Programs dated and finalized January 15, 1999 is hereby affirmed.

Dated, Washington, DC
October 2, 2000

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member