

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BONNIE E. ROGERS and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, Jacksonville, FL

*Docket No. 99-1964; Submitted on the Record;
Issued September 5, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI
VALERIE D. EVANS-HARRELL

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

On February 5, 1998 appellant, then a 47-year-old production controller, filed a claim for stress and depression that she attributed to chronic pain in her hands. In a statement accompanying her claim form, appellant stated that she had been transferred to several positions at the employing establishment since October 1994 and that she had experienced hand pain in each assignment, some of which she found difficult to perform due to her hand problems. By letter dated February 24, 1998, the Office of Workers' Compensation Programs advised appellant of the evidence needed to establish her claim, including "details of all prior emotional conditions which you have experienced" and a medical report containing a complete prior history and specification of what activities caused her illness.

By decision dated July 8, 1998, the Office found that appellant had failed to establish the fact of an employment-related injury.

The Board finds that appellant has not established 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 work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation 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.¹

One of the factors cited by appellant -- the repeated transfers of her work assignments or the employing establishment's refusal to do so when desired by appellant -- is not considered a compensable factor of employment, as it does not involve appellant's ability to perform her assigned work duties but rather constitutes her desire to work in a different position.² Appellant also attributed her emotional condition to her difficulty in performing some of the positions to which she was transferred. The Board has held that conditions related to stress resulting from trying to meet the requirements of the employee's position can be compensable under the Act.³ The Board has also held that an emotional condition related to chronic pain and limitations resulting from an employment injury can be compensable under the Act,⁴ and that being required to work beyond one's physical limitations can constitute a compensable employment factor if substantiated by the record.⁵

The record establishes that appellant had physical work tolerance limitations, but the employing establishment specifically denied that appellant was required to work beyond these physical limitations, stating that all her work assignments conformed with her doctors' restrictions. Appellant has not substantiated this potentially compensable factor of employment. Appellant also has not substantiated her allegation that her hand pain due to carpal tunnel syndrome and tendinitis was causally related to her employment. There is no indication that the Office approved a claim for these conditions, or that a claim for these conditions was even filed.

Even if appellant's hand pain were considered causally related to her employment, appellant cannot discharge her burden of proof by identifying employment factors which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical opinion evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factors.⁶

The case record does not contain such medical evidence. Dr. Charles Harkness, an osteopath, diagnosed stress reaction in a November 22, 1994 report and clinical depression in a June 23, 1995 report, but did not relate either of these conditions to any specific employment factors. In the earlier report, Dr. Harkness noted that appellant had filed another grievance and that she was "in a conflict." In the later report, Dr. Harkness cited "problems at work." As Dr. Harkness did not relate appellant's emotional or psychiatric conditions to any specific

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Donna J. DiBernardo*, 47 ECAB 700 (1996); *Buck Green*, 37 ECAB 374 (1986).

³ *Ezra D. Long*, 46 ECAB 791 (1995).

⁴ *Arnold A. Alley*, 44 ECAB 912 (1993).

⁵ *Diane C. Bernard*, 45 ECAB 223 (1993).

⁶ *See William P. George*, 43 ECAB 1159 (1992).

compensable employment factor, his reports are not sufficient to meet appellant's burden of proof.

Dr. R.F. Munn, an osteopath specializing in occupational medicine for the employing establishment, noted work stress and job switches in a June 23, 1995 report, in which he diagnosed situational stress/anxiety. However, in a February 13, 1998 report, Dr. Munn concluded that "there is insufficient evidence to support her claim for work-related stress based on available evidence." The reports of Laura Miller, a nurse practitioner, do not constitute competent medical evidence, as a nurse practitioner is not a "physician" within the definition contained in section 8101(2) of the Act.⁷ The reports dated from June 16 to September 26, 1997 from First Choice Medical, also cannot be considered competent medical evidence, as there is no indication that the persons completing these reports qualified as "physicians" under the Act.⁸ Appellant has not met her burden of proof.

The decision of the Office of Workers' Compensation Programs dated July 8, 1998 is affirmed.

Dated, Washington, D.C.
September 5, 2000

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

⁷ *Joe L. Wilkerson*, 47 ECAB 604 (1996).

⁸ *Merton J. Sills*, 39 ECAB 572 (1988). Even if it were established that one of the two signatures on these reports were that of a "physician," these reports do not contain an opinion that appellant's emotional condition is causally related to a compensable factor of employment.