

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KIMBERLY HANSEN and DEPARTMENT OF THE ARMY,  
MADIGAN ARMY HOSPITAL CENTER, Tacoma, WA

*Docket No. 00-1192; Submitted on the Record;  
Issued April 26, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

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

Appellant, then a 34-year-old radiology technician, filed a claim for an emotional condition due to stressful events, harassment and discrimination at the employing establishment. The claim was received by the Office of Workers' Compensation Programs on July 9, 1998. In a January 6, 1999 decision, the Office found that appellant had failed to establish that she sustained an emotional condition in the performance of duty. Appellant requested a hearing before an Office hearing representative which was held on August 25, 1999. In a November 30, 1999 decision, the hearing representative found that appellant had related her emotional condition to disciplinary actions, failure to receive a promotion, assessment of her performance and frustration in not being allowed to work in a particular environment. She stated that none of these factors were within the coverage of the Federal Employees' Compensation Act. She, therefore, affirmed the Office's January 6, 1999 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 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 his 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.<sup>1</sup> When the evidence demonstrates feelings

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<sup>1</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

of job insecurity and nothing more, 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.<sup>2</sup> 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.<sup>3</sup>

Appellant indicated that she had worked as a mammography radiology technician at the employing establishment since May 1994, after having received certification as a mammography radiology technician. She stated that the problems at the employing establishment began when Sergeant Beers took over the mammography section of the employing establishment on March 1, 1997. She indicated that Sergeant Beers engaged in harassment and verbal abuse, telling appellant and her coworkers that she did not want to be at the employing establishment and was going to make their lives a “living hell” for the time she was going to be in charge. She noted that Sergeant Beers was removed from her position in August 1997 after she was found to have alcohol on her breath and alcohol was detected in a blood test. She indicated that a coworker, Frances Kennedy was promoted to Sergeant Beers’ position and subjected appellant to further harassment.

Appellant made a general allegation that her emotional condition was due to harassment by her supervisors. Appellant also stated that she was further harassed by Ms. Kennedy and Dr. Donald Smith, the physician in charge of the section, as shown by a series of disciplinary actions to which she was subjected. 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.<sup>4</sup> However, even when harassment is alleged, the issue in the case is not only whether there was harassment but whether appellant’s emotional condition was caused by compensable factors of employment.<sup>5</sup> In this case, appellant presented evidence of incidents which she stated amounted to harassment or discrimination. Even though many of the incidents described by appellant related to administrative actions of the employing establishment, she contended that the actions were taken in error or were abusive and, therefore, were compensable factors of employment. In this type of case, the Office must develop the record by requesting statements from appellant’s supervisor and coworkers to establish a factual basis to determine whether the incidents described by appellant occurred as she claimed and

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<sup>2</sup> *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).

<sup>3</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990) *reaff’d on recon.*, 42 ECAB 566 (1991).

<sup>4</sup> *Joan Juanita Greene*, 41 ECAB 760 (1990).

<sup>5</sup> *Stanley Smith, O.D.*, 29 ECAB 652 (1978).

constituted compensable factors of employment.<sup>6</sup> The Office did not request any statement from appellant's supervisors or any other official at the employing establishment in response to appellant's detailed description of incidents which she stated caused or contributed to her emotional condition.

Verbal altercations and difficult relationships with supervisors, when sufficiently described by the claimant and supported by the evidence, may constitute a compensable factor of employment.<sup>7</sup> Sergeant Beers' alleged statement that she would make appellant's life a "living hell" would be evidence of verbal abuse if the evidence substantiated that this statement was made and was part of a series of verbally abusive statements. The Office did not request any information from Sergeant Beers on whether she made such a statement, or from appellant's coworkers at that time on whether such a statement was made.

Appellant indicated that she was improperly passed over for promotion to the position of lead technician. She stated that Ms. Kennedy was brought into her section of the employing establishment in August 1996 but was not certified to be a mammography radiology technician. Appellant indicated that she had to inform Dr. Smith that Ms. Kennedy had to be sent out for certification training. She noted that, when Ms. Kennedy was sent for the training, she failed the certification examination the first time and passed it only after retaking it. Appellant related that she had to redo mammography examinations done by Ms. Kennedy because the films were underexposed. She also commented that patients complained to her that Ms. Kennedy hurt them while performing the mammography x-rays. Appellant indicated that, when Sergeant Beers left the employing establishment, Ms. Kennedy was appointed interim lead technician even though appellant had more experience and had performed some of the duties of the position before the arrival of Sergeant Beers. She stated that she was on leave when the permanent position of lead technician was advertised and she, therefore, had less time to prepare her application than Ms. Kennedy did. She commented that the position initially required one year of experience in mammography radiology, which Ms. Kennedy did not have, but the description was altered to allow Ms. Kennedy to qualify for the position. She stated that she was subsequently informed that Ms. Kennedy had been described as a lead technician since October 1996. Appellant contended that she was never given an opportunity to practice as a lead technician as required by the employing establishment's personnel rules. She suggested that the selection of Ms. Kennedy was discriminatory because Ms. Kennedy was African-American while she was white. Failure to receive a promotion is not a compensable factor of employment as it is an administrative function of the employing establishment. However, appellant contended there was extensive error and abuse in the process of promoting Ms. Kennedy over her to the position of lead technician. The Office did not request any information from the employing establishment in response to appellant's contention that the promotion constituted error or abuse.

Appellant indicated that she had reported that a coworker, Cheryl Clark-Joseph, had a loaded gun in her car, which was against employing establishment rules. She stated that, when Ms. Clark-Joseph's car was searched and the gun found, Ms. Clark-Joseph approached appellant

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<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Claims Management*, Chapter 2.804.12(c); 2.804.17(j) (March 1994).

<sup>7</sup> *Janet D. Yates*, 49 ECAB 240 (1997).

closely, backed her against a wall, accused appellant of calling the military police and told her “that [i]s how people like you end up f...ing dead.” Appellant stated that she did not raise her voice at all and subsequently reported the coworker’s threats. She noted that the employing establishment’s response was to request that she sign a counseling memorandum about being disruptive at work. Such a threat of physical violence at the employing establishment would be a compensable factor of employment. The employing establishment was not asked to provide any information on whether the incident occurred as appellant claimed as is required by the Office’s procedure manual in cases of harassment by coworkers.<sup>8</sup>

Appellant indicated that she was subjected to a series of official discussions, reprimands and other forms of disciplinary actions which constituted harassment. The disciplinary actions would be administrative actions and, therefore, would not be compensable factors of employment unless there was evidence that these actions were taken in error or were abusive. Appellant indicated that she was reprimanded for talking to herself too loudly while making coffee. This activity was not related to the performance of appellant’s assigned duties and there is no showing that the action was taken in error.

Appellant indicated that she received a letter of warning concerning patient care, accusing her of pressing a patient to give the name of a coworker who had performed a prior mammography which the patient stated had hurt. She was informed that her actions showed harassment, a lack of teamwork, a lack of confidence in her coworkers and lack of following the chain of command. Appellant responded that the letter was based on lies and misperceptions. She stated that, while performing a repeat mammography on a patient on July 18, 1997, the patient indicated that her prior mammography, taken the previous month had hurt. Appellant commented that a mammography was not to be painful although it would cause discomfort. She, therefore, asked the patient who had performed the prior mammography. She indicated that this was one of the occasions she had to repeat a mammography previously performed by Ms. Kennedy which had been underexposed. Appellant indicated that she reported the patient’s complaint to Dr. Smith but received the letter in response. She, therefore, contended that the employing establishment’s actions were in error. The Office did not develop the record to determine the basis for the warning given to appellant and to determine whether the warning was based on inaccurate information.

Appellant indicated that on September 16, 1997 she left a meeting early to go to the bathroom and talk to a superior. She stated that she was approached by Dr. Smith who stated that the meeting had not ended and Ms. Kennedy was providing important information. Appellant related that when she returned to the meeting room the meeting was ending. She received an official counseling for leaving the meeting and for unprofessional verbal and nonverbal conduct. Appellant contended that the meeting was ending when she left and that Ms. Kennedy did not have sufficient time to convey any of the important information that she purportedly delivered to the staff. She also stated that she was not specifically informed on what actions were considered to be rude and inappropriate. Appellant noted that when she received a written reprimand about the meeting on October 2, 1997 she left the employing establishment crying and distraught. She related that, when Dr. Smith was advised by appellant’s coworkers not to let her drive home in such an emotional state, he responded that appellant had brought it

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<sup>8</sup> Federal (FECA) Procedure Manual, *supra* note 6.

upon herself. Appellant stated that in the same time period Ms. Clark-Joseph walked out in the middle of performing a mammography and refused to go back in. She indicated that Ms. Clark-Joseph did not receive any disciplinary action even though she had walked out on a patient while appellant had left a staff meeting. She contended that these actions showed disparate treatment and, therefore, abuse by the employing establishment. The Office did not request any statement from the employing establishment responding to appellant's detailed factual claim.

Appellant indicated that she did have an emotional reaction when her job description was changed in May 1997 to require her to perform x-rays in other parts of the employing establishment other than the mammography section. The modification in appellant's job duties is an administrative action and there is no showing that this action was in error or abusive. The change in appellant's job description by itself, therefore, is not a compensable factor of employment.

The case must, therefore, be remanded for further development. On remand, the Office should request the employing establishment to submit statements from appellant's supervisor, superiors and coworkers in response to appellant's detailed descriptions of incidents. The Office should also request information from the employing establishment's security force on whether Ms. Clark-Joseph's car was searched on one occasion for a loaded gun. The Office should then review and evaluate the statements and make a determination whether any of the incidents described by appellant constituted compensable factors of employment. After further development as it may find necessary, the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs, dated November 30, 1999, is hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, DC  
April 26, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member