

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GAIL A. GROSS and DEPARTMENT OF TREASURY,
INTERNAL REVENUE SERVICE, Bensalem, PA

*Docket No. 00-2695; Submitted on the Record;
Issued August 21, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant established an emotional condition in the performance of duty.

On April 19, 1997 appellant, then a 49-year-old branch/section manager, filed a notice of occupational disease claiming that she suffered from extreme stress, depression and anxiety as a result of factors of her federal employment. She stopped work on January 21, 1997 and has not returned.

In a decision dated July 23, 1998, the Office of Workers' Compensation Programs denied compensation on the grounds that appellant failed to establish an emotional condition causally related to factors of her federal employment.

On August 18, 1998 appellant requested a hearing.

In an August 20, 1999 decision, an Office hearing representative affirmed the Office's July 23, 1998 decision.

The Board has duly reviewed the record and finds that appellant has not established that she sustained an emotional condition in the performance of duty.¹

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his employment.² This burden includes the submission of a detailed description of the employment conditions or factors which appellant believes caused or adversely affected the condition for which he or she claims compensation.³ This burden also

¹ Appellant's appeal was postmarked August 18, 1999, although her appeal was not received by the Board until August 23, 1999. Because the date of receipt/date of filing would render the appeal untimely, it will be considered to have been filed as of the date of mailing evidenced by the postmark. *See* 20 C.F.R. § 501.3(3).

² *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

³ *See generally* 20 C.F.R. § 10.115-116 (1999).

includes the submission of rationalized medical opinion evidence, based upon a complete and accurate factual and medical background of appellant, showing a causal relationship between the condition for which compensation is claimed and the implicated factors or conditions of her federal employment.⁴

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but nevertheless are not covered because they are not found to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within coverage of the Act.⁵

The Office accepted that while under the supervision of George Griffin (1994 to 1996) appellant was harassed, in that he would yell and curse at her, and often speak negatively about her in front of others. The record contains numerous statements from appellant's coworkers verifying appellant's allegation of harassment. Appellant also filed a complaint against her supervisor with the Equal Employment Opportunity Commission (EEOC) and won that case with a settlement. The Office, however, found the medical evidence insufficient to establish a causal relationship between the employment factor, harassment and appellant's disability.

The Office determined that appellant failed to allege a compensable employment factor with respect to the following: (1) appellant did not receive the position of permanent section chief; (2) conflicts arose between day and night shifts, leaving appellant with more difficult work; (3) appellant was upset about the denial of a claim for work injury on January 14, 1997; (4) appellant was upset over any incident in which she was unable accompany an elderly aunt to the hospital because she had to report to work; and (5) appellant contends she was unjustly relieved of her managerial duties.

Initially, the Board notes that appellant's disappointment with not receiving a promotion,⁶ her complaints about the nature of her work assignments⁷ and being relieved of her managerial duties,⁸ involve administrative matters within the purview of the employing establishment and therefore are not compensable in the absence of a finding of error.⁹ The Board finds no evidence of error on behalf of the employer in this regard.

⁴ See *Ruth C. Borden*, 43 ECAB 146 (1991).

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ See *Martha L. Watson*, 46 ECAB 407 (1995).

⁷ See *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

⁸ See *Gregory N. Waite*, 46 ECAB 662 (1995).

⁹ See *Martha L. Watson*, *supra* note 6; *Mary L. Brooks*, 46 ECAB 266 (1994).

To the extent that appellant was upset about the denial of a workers' compensation claim, such emotional distress is not compensable.¹⁰ Likewise, appellant's emotional reaction to not being able to accompany her aunt to the hospital concerns her desire to work in a particular environment and is not associated with her regularly assigned work duties.¹¹

As to the medical evidence regarding the accepted factor of harassment, appellant submitted several medical reports.

In a note dated March 14, 1997, Dr. Makram A. Kalian, an osteopath and appellant's treating physician, stated that appellant was unable to work due to lower back pain. He noted that appellant suffered from anxiety and depression which "seems" from medical history given by appellant to be work related.

In a March 26, 1997 treatment note, Dr. Owen Maller, a licensed psychologist, indicated that appellant related a history of distress and harassment on the job by a supervisor, which resulted in an EEOC action. Dr. Maller noted that appellant was in the process of divorce proceedings and had a 28-year-old son living with her. He also noted that appellant had a demotion at work and was suffering from an eating disorder with weight gain following a back injury.

In a May 6, 1997 report, Dr. Maller noted that appellant had been previously seen by a psychiatrist identified as Dr. Greenfield, and that she was given medication for anxiety, poor attention and lethargy. Dr. Maller stated, "the onset and intensity of her illness seems to have been the result of the distress [appellant] underwent with alleged 'harassment' by her supervisors at work and compounded by a back injury reportedly incurred by lifting boxes of forms, not usually done on her job, to meet deadlines and performance standards." He reported that he had seen appellant on a weekly basis for psychotherapy for depression and post-traumatic stress disorder related to "traumas that occurred at work in 1996." Dr. Maller advised that appellant's recovery would be set back if she returned to her regular work site and recommended that she return to work at a work site closer to home to reduce the likelihood of a relapse. Appellant was noted as being able to return to work in September.¹²

On May 13, 1998 Dr. Maller prepared a document for the Department of Public Works indicating that appellant suffered from mental depression aggravated by a back injury and respiratory problems. There was no mention of harassment or discrimination on the job, her EEOC complaint or specific incidents occurring on the job or subsequent to her leaving her position.

In an August 1, 1998 report, Dr. Maller indicated that appellant had requested to return to work but expressed his belief that she should be placed at either another work site or in a different job with a different branch of government. The diagnoses were major depression with melancholic features and post-traumatic stress disorder.

¹⁰ Matters relating to the handling of a workers' compensation claim are administrative in nature and do not arise in the performance of duty. *Bettina M. Graf*, 47 ECAB 687 (1996).

¹¹ *Vaile F. Walders*, 46 ECAB 822 (1995).

¹² Dr. Maller prepared a similar report on August 15, 1997.

On February 27, 1998 Dr. Maller noted that the trauma that appellant had undergone at her job contributed significantly to her lethargy and anxiety, and that both of these states were aroused by having to deal with any matters relating to her job thereby eroding any productive effort. His diagnosis was severe depression and he sought an extension of time for appellant to prepare a work assignment.

To be of probative medical value, a physician's opinion regarding the cause of an emotional condition must relate the condition to the specific incidents or conditions of employment accepted as factors of employment, must be based on a complete and accurate factual history, and must contain adequate medical rationale in support of the conclusions.¹³ Although, Dr. Maller has opined that appellant's anxiety and depression are work related, he does not specifically explain the nature of appellant's harassment by her supervisor or how that harassment is causally related to appellant's emotional condition. The physician has also noted that appellant became depressed following a back injury and he identified nonwork-related stressors such as a pending divorce, which may have played a role in the development of appellant's emotional condition. Without a thorough discussion of the factual history surrounding appellant's emotional condition, and in absence of an adequate rationale for his conclusions, the Board does not consider Dr. Maller's opinion to be sufficiently reasoned to establish a causal relationship between appellant's emotional condition and factors of her employment. The Board therefore finds that the Office properly denied compensation.¹⁴

The decision of the Office of Workers' Compensation Programs dated August 20, 1999 is hereby affirmed.

Dated, Washington, DC
August 21, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

¹³ *Mary J. Ruddy*, 49 ECAB 545 (1998).

¹⁴ Dr. Kalian's March 14, 1997 note and Dr. Maller's May 6, 1997 report are equivocal in that the physicians qualify their opinions with regard to causal relationship by stating that appellant's anxiety and depression "seems" to be work related. See *William S. Wright*, 45 ECAB 498 (1994) (speculative or equivocal medical opinions are of diminished probative value).