

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHLEEN G. GERHOLD and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Martinsburg, WV

*Docket No. 00-2731; Submitted on the Record;
Issued August 22, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition while in the performance of her duties.

On March 22, 1999 appellant, then a 42-year-old program clerk, filed a claim asserting that her "stress/depression/muscle spasms of neck and back and insomnia, gastric problems, increased pain in disabled arm area" were a result of her federal employment. Appellant stated that when she was assigned to the Learning Resource Service (LRS) the Service Chief almost immediately began to harass her over the smallest requirements for her personal medical care, Equal Employment Opportunity (EEO) or union matters. She alleged that she was told that she was not wanted at LRS, she was forced to work beyond her physical limitations and that other employees were not required to report their every movement as she was. Appellant stated that her supervisor repeatedly denied her allotted official time as a union officer and forbade her to discuss any union business on the telephone (including receiving telephone calls) or in the immediate workplace. Appellant stated that she filed several EEO complaints. She stated that on more than one occasion her supervisor called her at her home and attempted to badger her into coming to work. She stated that he talked with her daughter in an attempt to get her to cancel a doctor's appointment. Appellant stated that on several occasions she came into work sick or in severe pain in order to comply with her supervisor's demands and to relieve the pressure being put on her family.

Appellant's supervisor responded that all efforts were made to accommodate appellant's limitations once her limitations were known. He stated that appellant would neglect to inform him of any additional restrictions until after the fact, and she provided medical documentation only after complaining that he was not adhering. He stated that appellant was authorized two hours of official union time per day and that the only time union meetings were denied was when it would leave LRS with no one to cover the office. Appellant's supervisor stated that he called appellant at home to get information or to find the location of documents that were needed for meetings scheduled that day. He denied badgering appellant to continue her typing.

In a decision dated July 7, 2000, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to show that her injury occurred in the performance of duty.

The Board finds that the evidence of record is insufficient to establish that appellant sustained an emotional condition while in the performance of her duties.

A claimant seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,² including that she is an "employee" within the meaning of the Act³ and that she filed her claim within the applicable time limitation.⁴ The claimant must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.⁵

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.⁶ An employee's emotional reaction to an administrative or personnel matter is generally not covered. Thus, the Board has held that an oral reprimand generally does not constitute a compensable factor of employment,⁷ neither do disciplinary matters consisting of counseling sessions, discussion or letters of warning for conduct;⁸ investigations;⁹ determinations concerning promotions and the work environment;¹⁰ discussions about a SF-171;¹¹ reassignment and subsequent denial of requests for transfer;¹² discussion about

¹ 5 U.S.C. §§ 8101-8193.

² *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

³ *Kenneth W. Grant*, 39 ECAB 208 (1987); *James E. Lynch*, 32 ECAB 216 (1980); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357 (1951); see 5 U.S.C. § 8101(1).

⁴ *Paul S. Devlin*, 39 ECAB 715 (1988); *Emmet L. Pickens*, 33 ECAB 1807 (1982); *Kathryn A. O'Donnell*, 7 ECAB 227 (1954); see 5 U.S.C. § 8122.

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989); see *Daniel R. Hickman*, 34 ECAB 1220 (1983).

⁶ *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Joseph F. McHale*, 45 ECAB 669 (1994).

⁸ *Barbara E. Hamm*, 45 ECAB 843 (1994); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁹ *Sandra F. Powell*, 45 ECAB 877 (1994).

¹⁰ *Merriett J. Kauffman*, 45 ECAB 696 (1994).

¹¹ *Lorna R. Strong*, 45 ECAB 470 (1994).

¹² *James W. Griffin*, 45 ECAB 774 (1994).

the employee's relationship with other supervisors;¹³ or the monitoring of work by a supervisor.¹⁴

Nonetheless, the Board has held that error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.¹⁵ Perceptions alone, however, are not sufficient to establish entitlement to compensation. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations with probative and reliable evidence.¹⁶

In this case, appellant attributes her emotional condition to the conduct of her supervisor. As a general matter her emotional reaction to such lies outside the scope of coverage of workers' compensation. To establish a compensable factor of employment and possible entitlement to compensation benefits, appellant must do more than allege error or abuse. She must substantiate error or abuse with probative and reliable evidence. The record in this case contains no such evidence. Appellant indicated that she filed several EEO complaints, but she submitted to the record no administrative finding or decision favorable to any of her allegations in this case. She has offered no other persuasive evidence to corroborate her allegations against her supervisor or to establish that her supervisor acted outside the bounds of his supervisory discretion. Further, the supervisor has countered appellant's allegations with a statement of his own explaining his side of the story and denying harassment. Without persuasive evidence substantiating that error or abuse or harassment did in fact occur, the record fails to establish a compensable incident or factor of employment, that is, an incident or factor of employment that falls within the scope of workers' compensation. Appellant has not met her burden of proof.

¹³ *Raul Campbell*, 45 ECAB 869 (1994).

¹⁴ *Daryl R. Davis*, 45 ECAB 907 (1994).

¹⁵ *Margreate Lublin*, 44 ECAB 945 (1993). See generally *Thomas D. McEuen*, 42 ECAB 566 (1991), *reaff'd on recon.*, 41 ECAB 387 (1990).

¹⁶ *Ruthie M. Evans*, 41 ECAB 416 (1990).

The July 7, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
August 22, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member