

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THERESA A. WENGER and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Fresno, CA

*Docket No. 01-383; Submitted on the Record;  
Issued August 8, 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.

On January 7, 2000 appellant, then a 47-year-old tax examiner, filed an occupational disease claim alleging that she sustained stress causally related to her federal employment.<sup>1</sup>

In a letter dated September 21, 1999, appellant related that she began seeing a physician on August 2, 1999 for work stress. She noted that her husband had a heart attack on August 14, 1999. Appellant stated that Regetta Nobles, her section chief, "did not even order my ergonomic chair until after I saw Dr. Cobb."

By decision dated July 31, 2000, the Office denied appellant's claim on the grounds that she did not establish an injury in the performance of duty. The Office determined that appellant had established as factual that she had a heart attack on August 14, 1999, that Ms. Nobles recommended that she try physical therapy and that Ms. Nobles did not order her an ergonomic chair. The Office found, however, that the incidents did not constitute compensable factors of employment.

Appellant requested reconsideration by letter dated August 7, 2000. In her request for reconsideration, appellant argued that the Office had confused her claim for carpal tunnel syndrome with her emotional condition claim. She also noted that she did not have a heart attack. Appellant stated, "The issue of stress is based on the hostile work environment in my area and the retaliation I had felt from upper management." She indicated that she had filed a claim with the Equal Employment Opportunity Commission (EEOC).

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<sup>1</sup> Appellant filed an occupational disease claim on September 17, 1999 for swelling of her ankles and wrist, neck spasms, shoulder pain and work stress. By letter dated December 9, 1999, the Office of Workers' Compensation Programs advised appellant to file a separate claim for her emotional condition.

By decision dated September 9, 2000, the Office modified its July 31, 2000 decision to reflect that appellant had not established fact of injury rather than an injury in the performance of duty. The Office determined that appellant “failed to establish that [she] experienced specific events or employment factors in a particular time, place and manner.”

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 duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees’ Compensation Act.<sup>2</sup> 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.<sup>3</sup>

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.<sup>4</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>5</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or 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.<sup>6</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>7</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>5</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>6</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>7</sup> *Id.*

In a letter dated February 10, 2000, the Office requested that appellant provide a statement describing the specific work incidents to which she attributed her emotional condition. The Board notes that, as discussed above, appellant's burden of proof includes submitting a detailed description of the employment factors that appellant believes caused or adversely affected the condition for which compensation is claimed.<sup>8</sup> In this case, appellant submitted brief statements describing medical treatment received and generally alleging that she experienced a hostile work environment. In the absence of an additional statement describing in detail the implicated work factors, appellant has not established a compensable factor of employment.

Additionally, appellant has submitted insufficient evidence to support her allegation that she experienced a hostile work environment and retaliation in the course of her federal employment. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.<sup>9</sup> However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.<sup>10</sup> In this case, appellant has not submitted sufficient evidence to establish that she was harassed by her supervisors or coworkers.<sup>11</sup> She submitted witness statements accompanying her EEO claim which generally support that a supervisor, Bernice Duncan, disclosed personal information about employees. However, none of the witness statements provide any specific details establishing that Ms. Duncan disclosed information about appellant or otherwise behaved towards her in a way that would constitute harassment.<sup>12</sup> Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that he sustained an emotional condition in the performance of duty.<sup>13</sup>

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<sup>8</sup> *Anne L. Livermore*, 46 ECAB 425 (1995).

<sup>9</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>10</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>11</sup> *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>12</sup> *See William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>13</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The decisions of the Office of Workers' Compensation Programs dated September 9 and July 31, 2000 are hereby affirmed.

Dated, Washington, DC  
August 8, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member