

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE E. BROWN and DEPARTMENT OF VETERANS AFFAIRS,
JERRY L. PETTIS MEMORIAL MEDICAL CENTER, Loma Linda, CA

*Docket No. 99-1720; Submitted on the Record;
Issued January 29, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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

The Office of Workers' Compensation Programs accepted appellant's December 19, 1991 claim for an emotional condition, finding that her bipolar disorder was aggravated by the employing establishment's failure to provide accommodation for her preexisting back condition. The Office determined that appellant was entitled to buy back leave she used from November 20 to December 10, 1991 and from January 20 to February 25, 1993.

On August 21, 1997 appellant filed a claim for a recurrence of disability, stating that the employing establishment had harassed her as a result of an Equal Employment Opportunity (EEO) complaint by tampering with her regular paychecks, involving her medical records with those from her service-connected condition and targeting her at a meeting on August 5, 1997. She listed the date of the recurrence as March 1997, but later noted that she had been off work since December 1996 for treatment of her military service-connected condition. By letter dated November 10, 1997, the Office advised appellant that it had received her claim for a recurrence of disability but was creating a new occupational disease claim because she attributed her condition to new employment factors.

After obtaining statements and documentary evidence from appellant and the employing establishment, the Office, by decision dated April 7, 1998, found that appellant had not substantiated any compensable factors of employment and therefore failed to establish that she sustained a psychiatric condition in the performance of duty. Appellant requested a hearing, which was held before an Office hearing representative on November 16, 1998. By decision dated February 11, 1999, the Office hearing representative found that appellant had not established that she was harassed or that the employing establishment had committed error or abuse in administrative or personnel matters.

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 his frustration from not being permitted to work in a particular environment or to hold a particular position.¹ Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in administration or personnel matters, coverage may be afforded.²

Most of the employment incidents and conditions to which appellant attributes her emotional condition concern administrative or personnel actions by the employing establishment. Appellant's primary contention is that she experienced stress due to the employing establishment's "tampering" with her paychecks. The employing establishment acknowledged that it paid appellant incorrectly following a December 1, 1993 settlement agreement that afforded appellant pay retention effective May 30, 1993, and that the error in her retained pay was not corrected until June 1997. In her February 11, 1999 decision, an Office hearing representative found that the mistakes and miscalculations in appellant's back pay were not compensable because they were not intentional. However, intentional wrongdoing is not required under the Act; an error from a misunderstanding at the employing establishment may be compensable.³ Appellant has established that the employing establishment erred by paying her at the wrong rate, and also in sending her letters in February 1998 erroneously indicating that certain amounts would be deducted from her salary to pay for appellant's health benefits during her period of leave without pay from June 1997 to January 1998.

Appellant also alleged that her request for leave buy back for periods in 1991 and 1993 was not processed until October 1997, but the delay in the processing of a claim, in and of itself, is not sufficient to establish error or abuse.⁴ Similarly, the delay in processing a CA-7 form is not a compensable factor of employment.

Appellant has also established error by the employing establishment in not issuing a letter of apology required by the December 1, 1993 settlement agreement within the 60 days specified in that agreement.

Appellant has not established error or abuse in the other administrative or personnel actions she cited. Contrary to her assertion that her promotion to the GS-5 level was wrongfully delayed, the evidence shows that she was promoted effective June 7, 1998, consistent with her upward training mobility agreement of January 13, 1995. The December 1, 1993 settlement agreement provided for pay retention at the GS-4, Step 7 level, not for promotion to the GS-5

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

² *Michael Thomas Plante*, 44 ECAB 510 (1993).

³ *Abe E. Scott*, 45 ECAB 164 (1993).

⁴ *See Elviva B. Lightner*, 39 ECAB 118 (1987).

level. Appellant has also not shown error or abuse in the provision of equipment, which is an administrative matter.⁵ As noted by the Office hearing representative's decision, appellant's contentions regarding the provision of a proper chair were addressed in the decision on the prior, accepted claim and appellant could request reconsideration of the findings in that claim. Appellant's new allegation regarding chairs was that upon her return to work in February 1998 the ergonomic chair she was given in 1990 was worn out. The employing establishment, however, provided a new chair upon appellant's request and no error or abuse in this action is established.

Appellant also has not substantiated error or abuse in the employing establishment's investigation of her activities while she was absent from work.⁶ Although a June 10, 1998 letter from the employing establishment's regional counsel indicates appellant was videotaped as part of an investigation, the evidence does not establish that this investigation related to workers' compensation benefits under the Act. Also not established as having occurred are the alleged intermingling of medical records regarding appellant's workers' compensation and military service-connected conditions, and the alleged inappropriate transmission to the Office of documents concerning appellant's EEO claims. Appellant's complaint that a resident was used to conduct an evaluation of her military service-connected condition bears no relation to the performance of her duties and is not covered under the Act. Also not covered under the Act because it is too remotely connected to appellant's employment are the restrictions the employing establishment imposed on appellant's representative.

Appellant claims that employing establishment managers harassed her following her December 1, 1993 settlement agreement. The Board has held that actions of an employee's supervisor which the employee characterizes as harassment or discrimination may constitute factors of employment giving rise to coverage under the Act. 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 alone of harassment or discrimination are not compensable under the Act.⁷ The Board finds that appellant has not established that any of the employing establishment's actions discussed above were done with the intent of harassing her.⁸

As appellant has established several compensable factors of employment, the Board will turn to an analysis of the medical evidence to determine whether it establishes that the compensable factors of appellant's employment caused or aggravated an emotional condition. Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused or adversely affected by her employment. As part of this burden she must present rationalized medical opinion evidence from a physician, based on a complete factual and medical background, showing causal relation. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal

⁵ *Harriet J. Landry*, 47 ECAB 543 (1996).

⁶ Investigations are administrative actions by the employing establishment. *Merriett J. Kauffman*, 45 ECAB 696 (1994).

⁷ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁸ *See Clara T. Norga*, 46 ECAB 473 (1995).

relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.⁹

The only evidence submitted by appellant in connection with the present claim consisted of reports from Nelson E. Evans, Ed.D., listed as a “psychologist.” Section 8101(2) of the Act provides that the term “physician” includes “clinical psychologists” within the scope of their practice as defined by state law.¹⁰ While associated with psychological health services in Moreno Valley, California, Dr. Evans degree is listed as doctorate in education. It is not apparent from the record that Dr. Evans is a “clinical psychologist” or that his reports are those of a “physician” as defined under the Act.¹¹ For this reason, his reports have no probative value on the question of appellant’s emotional condition.

The decision of the Office of Workers’ Compensation Programs dated February 11, 1999 is modified to reflect that appellant established several compensable employment factors and is affirmed as modified.

Dated, Washington, DC
January 29, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁹ *Bruce E. Martin*, 35 ECAB 1090 (1984).

¹⁰ 5 U.S.C. § 8101(2).

¹¹ *See Frederick C. Smith*, 48 ECAB 132 (1996).